

CHAPTER 165. ADMINISTRATIVE RULES

Subchap.	Sec.
A. PENALTIES AND LIABILITIES	165.1
B. LICENSES	165.11
C. ISSUANCE AND TRANSFER OF STOCK	165.51
D. REQUIREMENTS FOR TRACKS AND RELATED REGULATIONS	165.71
E. PARI-MUTUEL WAGERING	165.111
F. ADMISSION OF HORSES TO PARI-MUTUEL RACING PLANTS	165.141
G. TAXES AND INSURANCE	165.151
H. RULES OF PRACTICE AND PROCEDURE	165.171

Cross References

This chapter cited in 58 Pa. Code § 163.481 (relating to review and appeal).

Subchapter A. PENALTIES AND LIABILITIES

Sec. 165.1. General provisions.

§ 165.1. General provisions.

(a) *Liability.* A person, firm or corporation licensed by the Commission, or a person, firm or corporation subject to the jurisdiction of the Commission, violating this part is liable to the penalties provided in this section, unless otherwise limited in this part.

(b) *Attempt to violate.* An attempt to violate the law or this part falling short of actual accomplishment, shall constitute an offense and shall be punishable as if consummated.

(c) *Penalties.* Penalties may include the following:

(1) The penalties for violation of the law or this part may include the following:

- (i) Denial, revocation or suspension of license.
- (ii) Monetary fines not exceeding \$5,000 for each violation.
- (iii) Suspension from one or more activities at one or more tracks.
- (iv) Expulsion from thoroughbred racing in this Commonwealth.
- (v) Forfeiture of purse.
- (vi) Other penalties or sanctions permitted by the act and this subpart and appear proper and appropriate to the Commission or stewards.

(2) The penalties provided in paragraph (1), were applicable, may be exacted from all persons, whether licensed by the Commission or not who utilize the facilities of a licensed enclosure or participate in racing activities regulated by this Commission.

Subchapter B. LICENSES

- Sec.
- 165.11. License required to conduct thoroughbred race meets with pari-mutuel wagering.
 - 165.12. Location of plant.
 - 165.13. Filing of information concerning stock transfers.
 - 165.14. Number of racing days.
 - 165.15. Application for license.
 - 165.16. Hearings.
 - 165.17. Advertisement of filing application.
 - 165.18. Issuance of license.
 - 165.19. Knowledge of rules.
 - 165.20. Stock certificates.
 - 165.21. Accounting system.
 - 165.22. Financial reports.
 - 165.23. Reports.
 - 165.24. Filing of agreements and approval of contracts.
 - 165.25. Night racing.
 - 165.26. Admission of minors.
 - 165.27. Passes.
 - 165.28. Telephones.
 - 165.29. Employes of an association.
 - 165.30. Concessionaires.
 - 165.31. Occupational and participation licenses.
 - 165.32. Information.
 - 165.33. Prohibition of interest by public officers, public employes and party officers in pari-mutuel racing activities.
 - 165.34. Refusal to issue, suspension and revocation of corporation license.
 - 165.35. Refusal to issue, suspension and revocation of occupational or participation license.
 - 165.36. Temporary license.
 - 165.37. Fines and penalties.

§ 165.11. License required to conduct thoroughbred race meets with pari-mutuel wagering.

No corporation organized pursuant to the act shall conduct any thoroughbred horse race meet with pari-mutuel wagering except on obtaining a license from the Commission.

§ 165.12. Location of plant.

No corporation shall conduct any thoroughbred horse race meet except at the location or locations designated in the license awarded by the Commission, which shall be the location or locations designated in its certificate of incorporation, provided, however, that this restriction shall not apply to any corporation whose plant or the usefulness thereof or of any material part thereof, shall, for any reason beyond the control of such corporation, be totally destroyed or so substantially damaged as to render it unfit for continued operation in which case, the

Commission may, in its discretion, permit the corporation to conduct its meets at any other suitable location, pending the rebuilding or restoration of the plant so destroyed or damaged.

§ 165.13. Filing of information concerning stock transfers.

Where in every case provided for under section 4 of the act (15 P. S. § 2654) and §§ 165.51—165.63 (relating to issuance and transfer of stock) duplicate affidavits are filed with a corporation relating to the issue or transfer of stock, the corporation shall within ten days after receipt of such affidavits file one of each of the duplicate affidavits received by it with the Commission. If the Commission determines that it is inconsistent with the public interest, convenience, or necessity, or with the best interest of racing generally, that any person, association, or corporation continue to be a stockholder of record or the beneficial owner of any interest in stock standing in the name of another, in any corporation licensed under the act, or of any corporation which leases to such licensee the track at which it conducts thoroughbred horse race meets with pari-mutuel wagering, or which owned 25% or more of the stock of such licensee, the Commission shall order each such stockholder or beneficial owner to dispose of his stock or interest therein within a period of time specified by the Commission, which period the Commission shall have full power and authority to extend from time to time.

§ 165.14. Number of racing days.

No corporation shall be licensed to conduct thoroughbred horse racing with pari-mutuel wagering for more than 100 days in any calendar year. The Commission shall approve and specify the dates and hours during which the corporation may conduct such racing. Where a race program is cancelled under § 163.341 (relating to duties of stewards) before the completion of a numerical majority of the races scheduled to be raced on such program, that racing day shall not be computed as within the 100 days limitation.

§ 165.15. Application for license.

Applications for licenses and applications for renewal of licenses to conduct thoroughbred horse race meets with pari-mutuel wagering shall be made, under oath, to the Commission in its approved form, at a time not later than the date designated by the Commission. A filing fee of \$1,000 shall be submitted with each application, to be deposited to the credit of the State Horse Racing Fund, which filing fee will not be refundable.

§ 165.16. Hearings.

In its consideration of any application for a license to conduct thoroughbred horse race meets with pari-mutuel wagering, the Commission may conduct such hearings as it shall deem necessary to inquire into such matters as shall relate to

the application filed with the Commission. The time and place of such meets, as well as any notice to be given thereof, shall be as designated by the Commission.

§ 165.17. Advertisement of filing application.

If the applicant for a license to conduct thoroughbred horse race meets with pari-mutuel wagering has not conducted any such meets at the location set forth in its application during the current year in which the application is filed with the Commission, the applicant shall publish one time in a newspaper of general circulation within the municipal subdivision in which it proposes to hold said meets, and also in the legal periodical for the county in which it proposes to hold said meets, and shall also post at not less than ten conspicuous places in the vicinity and at the location of the proposed meets, such places to be along public streets and highways and shall be clearly visible to the general public, a notice setting forth that applicant has or will file an application with the Commission for a license to conduct thoroughbred horse race meets with pari-mutuel wagering, the date of such filing, and a general description of the location of the proposed track, describing same in such manner as to afford the general public an adequate notice of said location. Said notice shall also set forth that any objections to said application by any interested persons must be filed with the Commission, Harrisburg, Pennsylvania, no later than the date fixed in said notice, which date shall be not less than ten days after the date of last advertisement of such notice, and shall further state that such objections shall be in writing, fully setting forth the reasons alleged for said objections. Proofs of publication and of posting said notice shall be filed with the Commission, together with a copy of the said notice.

§ 165.18. Issuance of license.

Upon receipt of an application satisfactory in form and substance to the Commission and upon its determination that a proper case for issuance of a license has been proven, the Commission shall grant its license for a term of days during the current year during which the applicant may conduct thoroughbred horse racing with pari-mutuel wagering. Such license shall specify the place where and the hours of the day or night during which racing and pari-mutuel wagering shall be held. The term of the license shall end not later than the 15th day of November next succeeding the granting thereof. In considering an application for a license, the Commission may, among other things, give consideration to the number of licenses already granted; the character, experience, and general fitness of the officers, directors, members, stockholders, or persons having a beneficial ownership in applicant; the corporation, if any, owning stock in or which shares in the profits or participates in the management of the affairs of the applicant, or which leases to such applicant the plant where it shall operate; the financial responsibility of the applicant; plant facilities; location of plant; equipment to be used in the plant; the personnel to be employed by applicant; policy plants; the public inter-

est, convenience, or necessity and the best interests of racing generally. The Commission will furthermore give consideration to all of the answers made by the applicant to questions contained in the application, and to all other matters presented by the applicant to the Commission, and appearing in its records.

§ 165.19. Knowledge of rules.

All corporations, their officers, agents and employes are responsible for the conduct of their meetings and shall make certain that all officers, agents, and employes are thoroughly familiar with the provisions of the pertinent law and the rules and regulations of the Commission and of the Department of Revenue.

§ 165.20. Stock certificates.

(a) Each certificate of stock issued by any corporation which holds any license from the Commission, or of any firm, association, or corporation which owns or leases to any licensed association, or corporation a race track at which pari-mutuel thoroughbred racing is conducted, or of any firm, association, or corporation which participates in the management of any corporation which holds any license from the Commission, shall have plainly and prominently imprinted upon its face the following language:

The person whose name is indicated as the owner of the shares of stock represented by this certificate is the sole and absolute owner thereof, and such owner is not holding the shares of stock or any portion of the shares of stock represented by said certificate in trust for any person, partnership, firm or corporation whatsoever, who or which is prohibited from owning such shares of stock by the Pennsylvania Thoroughbred Horse Racing Law. This certificate of stock is transferable only subject to the provisions of the Pennsylvania Thoroughbred Horse Racing Law and the Rules and Regulations promulgated thereunder by the Commission.

(b) If any of the shares of stock represented by a certificate of stock are held subject to the terms of either an inter vivos or testamentary trust for the benefit of any person who could lawfully own such stock in his own name, such fact shall be so noted on the face of the certificate and a copy of the instrument which created the trust shall be attached thereto. A duplicate copy of the instrument which created the trust shall be filed by the licensee with the Commission.

§ 165.21. Accounting system.

All licensees must adopt the uniform system of accounts and reporting which will be furnished to such licensees by the Department of Revenue.

Cross References

This section cited in 58 Pa. Code § 165.24 (relating to filing of agreements and approval of contracts).

§ 165.22. Financial reports.

(a) The licensee must maintain separate general ledgers and books of original entries for each calendar or fiscal year. The following financial reports must be submitted to the Commission at the close of each licensee's racing meet and at the close of the licensee's fiscal year:

- (1) Statement of Assets and Liabilities.
- (2) Statement of Profit and Loss and Surplus.

(b) Interim reports must be submitted to the Commission and must include all operations for the current period and shall be filed within 90 days of the end of each of the first three calendar quarters of the calendar or fiscal year.

(c) Annual reports are to include all operations for the licensee's calendar or fiscal year, are to be audited, and must be filed with the Commission concurrently with the filing of the licensee's Federal income tax return in each succeeding year.

(d) All reports must be verified under oath by at least two of the licensee's principal officers, and by the persons actually preparing the reports.

(e) Separate records of each bank reconciliation must be maintained by the licensee in a manner which will clearly indicate all reconciling items between the balance per the bank statement and the balance per the licensee's books at the date of reconciliation.

Source

The provisions of this § 165.22 amended November 7, 1980, effective November 8, 1980, 10 Pa.B. 4299. Immediately preceding text appears at serial page (51708).

§ 165.23. Reports.

All licensees are required to submit to the Commission the following:

- (1) Copies of weekly payrolls of all personnel employed at the track during the race meet, including the state license number, if any, address and title of each employe.
- (2) Copies of all written contracts and agreements and a summary of all verbal contracts and agreements.
- (3) List of stockholders annually, or as the Commission may require.
- (4) List of officers and directors and compensation paid to each or as the Commission may require. The Commission shall be notified forthwith of any change in the officers, stockholders, and directors of a licensee.

§ 165.24. Filing of agreements and approval of contracts.

In addition to the reports required under § 165.21 (relating to accounting system), every corporation licensed shall promptly, after entering into any lease agreement concerning any concession or any agreement regarding labor management, hiring of officers, employes or contractors, as specified by the Commission, or any such other contract, agreement or arrangements, as the Commission may

from time to time prescribe, file with the Commission a true and correct copy thereof, or an accurate summary thereof, if oral. No contract may be entered into by any corporation with any third persons, including individuals, partnerships, corporations, profit or nonprofit unincorporated associations, or any combination of the above, without approval of the contract by the Commission. In the event approval of the contract is not obtained by licensee prior to its execution, the contract shall contain a provision which states that the contract will not be operative unless approved by the Commission.

§ 165.25. Night racing.

At all meets held at night, the post time of the last race shall be not later than 11:55 p.m. prevailing time. At that hour, regardless of the completion of the program, the Stewards shall cause the machines or other devices used for wagering to be locked. Licensees shall provide a lock control in the Stewards stand for that purpose.

§ 165.26. Admission of minors.

No corporation which is licensed by the Commission shall permit any person who is actually and apparently under 18 years of age to bet at a thoroughbred horse race meeting conducted by it and no such corporation shall permit any person who is actually and apparently between ten and 18 years of age to attend a thoroughbred horse race meeting conducted by it unless such person is accompanied by a parent or guardian and no such corporation shall permit any person who is actually and apparently under ten years of age to attend a thoroughbred horse race meeting conducted by it. The provisions of this section shall not be construed to prohibit persons under 18 years of age, who are legally employed, from being in and upon the race track premises for the purpose solely of engaging in the performance of their duties as employees. In no event shall a minor be permitted to wager upon any race, nor shall such minor be permitted to be in the area of the track other than that area in which his duties are to be performed. All corporations licensed by the Commission shall be responsible for establishing the administrative and security procedures necessary to enforce the provisions of this section at the tracks operated by them. Every licensee employing any minor shall be required to establish procedures necessary to assure compliance with the provisions of this section by any minor employed by such licensee.

§ 165.27. Passes.

A corporation licensed by the Commission shall not issue free passes, cards, or badges except to officers and employees of the licensee conducting the meet; members, officers and employees of the Commission; members of thoroughbred horse racing commissions of other states and foreign countries; officers and directors of the Thoroughbred Racing Association and the National Association

of State Racing Commissioners; public officers engaged in the performance of their duties; persons actually employed and accredited by the press to attend meets; owners, stable managers, trainers, jockeys, concessionaires and other persons whose actual duties require their presence at the track, as approved by the Commission. A list of all persons to whom free passes, cards or badges are issued shall be filed with the Commission.

§ 165.28. Telephones.

All public telephones on the grounds of a corporation licensed shall be padlocked with the opening of the pari-mutuel windows for the sale of daily double tickets. Each corporation licensed shall provide ample telephone facilities upon the plant grounds. No public telephone calls shall be made or received after the public telephones are closed until after the last race of the program has been completed except by officials of the Commission and officials of the Department of Revenue in pursuance of their duties at the track, or by special permission of the Executive Secretary of the Commission or the State Steward, in which case such calls shall be made in the presence of a racing official or an official of the corporation licensed.

§ 165.29. Employes of an association.

At least 85% of the persons, exclusive of racing officials, employed each day in the operation and conduct of the pari-mutuel betting at thoroughbred horse race meets licensed by the Commission shall be citizens of the United States of America and residents of the Commonwealth of Pennsylvania for at least 2 years immediately prior to the commencement of their employment at the track, and every employe shall be required to execute and submit to the corporation by which he is employed, a duly verified affidavit setting forth his qualifications pursuant to this section.

§ 165.30. Concessionaires.

Any person, firm, association, group, or corporation which holds any concession, right, or privilege to perform any service or sell any article at any race track at which a corporation licensed by the Commission conducts race meets must submit to the Commission a copy of each report, advice or other document which that person, firm, association, group, or corporation furnishes or is required to furnish to the licensee in order to substantiate any commission rentals, service fees and similar financial or other arrangements between the parties. Any person, firm, association, group or corporation operating a concession, performing any service or selling any article at more than one licensed track must submit separate reports of his operation at each track.

(1) *Financial statements.* At the end of each meet such person, firm, association, group or corporation shall prepare and send to the Commission a record of its operations at the track in the form of a Profit and Loss Statement.

Such report shall show the gross revenues derived from the meet, as well as all expenses paid or accrued during the same period. Income and expense items must be shown in detail in such reports; must be verified by at least two of the principal officers of the firm, association, or group, if an association, corporation or group, and by the one or more owners or proprietors thereof if not an association, corporation or group. Such report must be filed with the Commission within 30 days after the end of each individual meet. Within 75 days after the end of its calendar or fiscal year, all such persons, firm, association, corporation or group shall submit to the Commission, verified financial statements, including a Balance Sheet and a Statement of Profit and Loss, showing the combined operations for that year and the results of such operations for each specific thoroughbred horse race meet at which he, they or it, conducted business during the year.

(2) *Reports.* Such person, firm, association, corporation, or group, if requested, must submit to the Commission the following:

(i) Copies of weekly payrolls of all personnel employed at the track during its race meet, including address and title of each employe.

(ii) Copies of all written contracts and agreements and a summary of all verbal contracts and agreements.

(iii) List of stockholders annually or as the Commission may require.

(iv) List of officers and directors and compensation paid to each annually, or as the Commission may require.

(v) Upon the sale or transfer of any stock of any concessionaire at a licensed thoroughbred horse racing track, evidence of such sale or transfer must be transmitted to the Commission by affidavit verifying such transfer or sale containing such information as is required of stock transfers of licensed corporations.

§ 165.31. Occupational and participation licenses.

(a) No person or entity shall participate in the affairs of any corporation licensed by the Commission as director, officer, agent, employe or as the owner or holder of more than 10% interest of such license without first receiving a license from the Commission. "Ownership" or the "holding of an interest," shall be deemed to include a legal or equitable interest involving the right to receipt of any profit, gain or other form of benefit or right of dominion arising from rights or proxy or other forms of voting control, straw, nominee, or dummy holdings, participation in voting trusts, shareholder agreements or pools, the holding of options, security interests, or assignments, pledges, redemptions or all rights of any other similar, direct or choate nature.

(b) No person shall participate in any thoroughbred horse race meet as a racing official, owner, trainer, assistant trainer, or in any other occupation as listed in §§ 163.51—163.54, of otherwise or be the holder of any concession, or be an

employe of a concessionaire, unless such person shall first have received a license from the Commission.

(c) Each corporation licensed by the Commission to conduct thoroughbred horse race meets shall prevent any person not holding an occupational or participation license from doing or performing any act or acts at the track maintained by such licensee or at which it conducts its meets, and it shall be the responsibility of the licensee to exclude any undesirable persons if directed by the Commission, or its representatives.

(d) Each occupational or participation license shall be for the period ending December thirty-first of the year in which the same shall be issued: provided, however, that the Commission may, pending final determination of any question, issue a temporary license upon such terms and conditions it may deem necessary, desirable or proper to effectuate the provisions of the act.

(e) An application for an occupational or participation license shall be made upon a form supplied by the Commission and shall be executed in the manner prescribed by the Commission. The Commission may issue written instructions as to the preparation and execution of applications for such licenses which instructions may be a part of, or separate from, the application form. Failure to comply with any such instructions shall be grounds for denial, suspension or revocation of such license.

(f) Each applicant for an occupational or participation license shall pay to the Commission such annual license fee as shall from time to time be prescribed by statute, rule or order. The fee shall be paid at the time of the filing of the application. No application for any license shall be accepted by the Commission unless accompanied by such necessary fee.

(g) Should such licensee lose a license or should such license be destroyed, such licensee may apply for a duplicate license by filing an affidavit on a form supplied by the Commission and the payment of a fee of \$1.

Source

The provisions of this § 165.31 amended April 14, 1978, effective April 15, 1978, 8 Pa.B. 1112.

Cross References

This section cited in 58 Pa. Code § 165.56 (relating to affidavit of beneficial owners other than a registered stockholder).

§ 165.32. Information.

Every corporation licensed by the Commission to conduct thoroughbred horse race meets shall furnish to the Commission at all times the current name, address and experience of the following employes:

- (1) General Manager.
- (2) Pari-mutuel Manager.
- (3) Racing Secretary.

- (4) Director of Racing.
- (5) Clerk of the Course.
- (6) Track Superintendent.
- (7) Publicity Director.
- (8) Race Announcer.
- (9) Concession Managers.
- (10) Admission Manager.
- (11) Parking Superintendent.
- (12) Stable Superintendent.
- (13) Chief Security Officer.

§ 165.33. Prohibition of interest by public officers, public employes, and party officers in pari-mutuel racing activities.

(a) As used in this section, the following terms shall have the following meanings:

- (1) Public Officer—Every person elected to any public office of the Commonwealth or any political subdivision thereof.
- (2) Public Employe—Every person employed by the Commonwealth or any political subdivision thereof.
- (3) Party Officer—The following members or officers of any political party:
 - (i) A member of a National Committee.
 - (ii) A chairperson, vice-chairperson, secretary, treasurer or counsel of a State committee or member of the executive committee of a State committee.
 - (iii) A county chairperson, vice-chairperson, counsel, secretary or treasurer of a county committee.
 - (iv) A city chairperson, vice-chairperson, counsel, secretary or treasurer of a city committee.

(b) A public officer, public employe or party officer as defined in subsection (a) may not:

- (1) Hold a license to conduct a pari-mutuel from the Commission.
- (2) Own or hold directly or indirectly any proprietary interest, stock or obligation of a firm, association or corporation:
 - (i) Which is licensed by the Commission to conduct pari-mutuel racing.
 - (ii) Which is licensed to conduct its occupation, trade or business at race tracks at which pari-mutuel race meets are conducted.
 - (iii) Which owns or leases to any licensed association or corporation a race track at which pari-mutuel racing is conducted.
 - (iv) Which participates in the management of any licensee conducting pari-mutuel racing.

(3) Hold an office or employment with a firm, association or corporation specified in this subsection, except that the prohibition set forth in this paragraph does not apply to a public employe (other than a police officer or paid employe of a police department, sheriff's office, district attorney's office or other law enforcement agency); provided, however, that the employment of employes of a political subdivision may be prohibited by ordinance, resolution or local law adopted by the local legislative body or other governing board of the political subdivision.

(4) Sell, or be a member of a firm or own 10% or more of the stock of a corporation which sells goods or services to a firm, association or corporation specified in paragraph (2).

Cross References

This section cited in 58 Pa. Code § 165.34 (relating to refusal to issue, suspension and revocation of corporation license); and 58 Pa. Code § 165.35 (relating to refusal to issue, suspension and revocation of occupational or participation license).

§ 165.34. Refusal to issue, suspension and revocation of corporation license.

The Commission may refuse to grant a license, may suspend or revoke a license of a corporation if it determines that:

(1) The corporation has failed to abide by or enforce the provisions of the law or the rules and regulations of the Commission or the Department of Revenue.

(2) An officer, director, member or stockholder of a corporation applying for or holding a license or of a corporation which owns stock in or shares in the profits or participates in the management of the affairs of the corporation, or which leases to the corporation the track where it shall operate:

(i) Has been convicted of a crime involving moral turpitude.

(ii) Has engaged in bookmaking or other form of illegal gambling.

(iii) Has been found guilty of fraud or misrepresentation in connection with racing or breeding.

(iv) Has been guilty of a violation or attempt to violate a law, rule or regulation of racing in a jurisdiction, for which suspension from racing might be imposed in the jurisdiction.

(v) Has violated a rule, regulation or order of the Commission.

(3) The experience, character or general fitness of an officer, director or stockholder of a corporation is such that the participation of the person in thoroughbred horse racing or related activity would be inconsistent with the public interest, convenience or necessity or with the best interests of racing generally.

(4) The corporation falsified answers or makes misrepresentations to the Commission in its application for license or in another document required to be filled by the corporation under the law or this part.

(5) The corporation has failed to properly maintain its track and plant in good condition or has failed to make adequate provisions for rehabilitation and capital improvements to its track and plant.

(6) The corporation has issued or caused to be issued false or misleading advertisement.

(7) The corporation or its officers or directors shall knowingly or carelessly permit on its grounds or within the enclosure of its race track, lotteries, pool selling, touting or bookmaking or any other kind of gambling in violation of law.

(8) The corporation has aided or knowingly permitted or conspired to permit a public officer, public employe or party officer as defined in § 165.33 (relating to prohibition of interest by public officers, public employes, party officers in pari-mutuel racing activities) to acquire or retain any stock interest in or hold an office or employment with the corporation.

Cross References

This section cited in 58 Pa. Code § 165.36 (relating to temporary license).

§ 165.35. Refusal to issue, suspension and revocation of occupational or participation license.

The Commission may refuse to grant a license, may suspend or revoke a license of an occupational or participation licensee, including racing officials, if it determines:

(1) That the experience, character and general fitness of the applicant or licensee are such that the participation of the person in thoroughbred horse race meets will be inconsistent with the public interest, the best interests of racing generally.

(2) That the applicant or licensee:

(i) Has been convicted of a crime involving moral turpitude.

(ii) Has engaged in bookmaking or other forms of illegal gambling.

(iii) Has been found guilty of fraud in connection with racing or breeding.

(iv) Has been guilty of a violation or attempt to violate a law, rule or regulation of a racing jurisdiction for which suspension from racing might be imposed in the jurisdiction.

(v) Has violated or failed to follow this part or order of the Commission.

(vi) Has falsified answers or made misrepresentations to the Commission in his application for a license.

(vii) Is incompetent.

(viii) In the case of racing officials, has consumed alcoholic beverages within 4 hours prior to the time they are required to perform their duties as officials.

(3) That the applicant or licensee has aided or knowingly permitted or conspired to permit a public officer, public employe or party officer as defined in § 165.33 (relating to prohibition of interest by public officers, public employes and party officers in pari-mutuel racing activities) to acquire or retain stock interest in or hold an office or employment with the applicant or licensee.

Cross References

This section cited in 58 Pa. Code § 165.36 (relating to temporary license).

§ 165.36. Temporary license.

Pending final determination of a question under §§ 165.34 and 165.35 (relating to refusal to issue, suspension and revocation of corporation license; and refusal to issue, suspension and revocation of occupational or participation license), the Commission may issue a temporary license upon the terms as it may deem necessary or proper to effectuate the law.

§ 165.37. Fines and penalties.

The Commission may impose fines on a corporation, association or person participating in a thoroughbred horse race meet at which pari-mutuel wagering is conducted, other than as a patron, and whether licensed or not by the Commission, for a violation of the law or this part. The fine may not exceed \$5,000 for each violation.

Subchapter C. ISSUANCE AND TRANSFER OF STOCK

Sec.

- 165.51. Individual stockholders—voting and nonvoting stock.
- 165.52. Corporations—voting and nonvoting stock.
- 165.53. Partnership stockholders.
- 165.54. Unincorporated club or other unincorporated organization as stockholder.
- 165.55. Additional information required when registered stockholder is not the sole beneficial owner.
- 165.56. Affidavit of beneficial owners other than a registered stockholder.
- 165.57. Beneficial ownership of stock by minors, incompetents and unascertained beneficiaries.
- 165.58. Change of status of affiants who are beneficial owners.
- 165.59. Debenture holders.
- 165.60. Affidavits to be filed with the Commission.
- 165.61. Duty of corporate licensees.
- 165.62. Forfeitures of property rights in the stock held in trust.
- 165.63. Exception.

Cross References

This subchapter cited in 58 Pa. Code § 171.42 (relating to concessionaires).

§ 165.51. Individual stockholders—voting and nonvoting stock.

(a) *Requirement to obtain affidavits.* The term “transfer” as used in this subchapter shall be deemed to include a sale, transfer or exchange of stock or the creation of a beneficial, legal or equitable interest therein, including, but not limited to, transfers by or between straws, nominees or dummies, transfers for or among voting trusts, agreements or pools, the giving or creation of options, pledges or rights of redemption, transfers in trust or escrow or the creation of other similar direct or choate interest. Whenever a transfer of stock of a corporation which is licensed by the Commission, or of a corporation which leases to the licensee the track at which it conducts pari-mutuel thoroughbred horse races, or which owns 25% or more of the stock of the licensee shall be made to an individual, the corporation shall obtain contemporaneously with the transfer, whether original issuance or otherwise, an affidavit, in duplicate, executed by each individual setting forth:

- (1) Name.
- (2) Address.
- (3) Age (not applicable in case of nonvoting stock).
- (4) Occupation (not applicable in case of nonvoting stock).
- (5) The number and class of shares being transferred.
- (6) Whether he is and will be the sole beneficial owner of the stock.
- (7) Whether he has been convicted of a crime involving moral turpitude.
- (8) Whether he has ever been engaged in bookmaking or other forms of illegal gambling.
- (9) Whether he has ever been found guilty of fraud or misrepresentation in connection with racing or breeding.
- (10) Whether he has ever been guilty of a violation or attempt to violate a law, rule or regulation of a racing jurisdiction, for which suspension from racing might be imposed in the jurisdiction.
- (11) Whether he has ever violated this part or an order of the Commission.
- (12) That he does not hold an elected office in the Commonwealth or a political subdivision thereof; is not employed by the Commonwealth or a political subdivision thereof; and is not a member of a National party committee, a chairperson, vice-chairperson, secretary, treasurer, counsel or member of an executive committee of a State committee, a county chairperson, vice-chairperson, counsel, secretary or treasurer of a county committee, or a city chairperson, vice-chairperson, counsel, secretary or treasurer of a city committee.

(b) *Change of status of affiant other than by stock transfer.* If, subsequent to the filing of an affidavit required under subsection (a), the status of an affiant changes without a transfer of stock with respect to the matters in subsection

(a)(5)—(12), the affiant shall forthwith file with the corporation with which his affidavit was originally filed, a new affidavit in duplicate setting forth with particularity the change.

Cross References

This section cited in 58 Pa. Code § 165.13 (relating to filing of information concerning stock transfers); 58 Pa. Code § 165.31 (relating to occupational and participation licenses); 58 Pa. Code § 165.52 (relating to corporations—voting and nonvoting stock); 58 Pa. Code § 165.53 (relating to partnership stockholders); 58 Pa. Code § 165.54 (relating to unincorporated club or other unincorporated organization as stockholder); 58 Pa. Code § 165.56 (relating to affidavit of beneficial owners other than a registered stockholder); and 58 Pa. Code § 165.58 (relating to change of status of affiants who are beneficial owners).

§ 165.52. Corporations—voting and nonvoting stock.

(a) *Requirement to obtain affidavits.* When a transfer of stock of a corporation which is licensed by the Commission, or of a corporation which leases to the licensee the track at which it conducts pari-mutuel thoroughbred horse races, or which owns 25% or more of the stock of the licensee, shall be made to a corporation, the corporation shall obtain contemporaneously with the transfer, whether original issuance or otherwise, an affidavit, in duplicate, executed by the President, Secretary, Treasurer or other Executive Officer of the corporate stock transferee, which shall contain:

- (1) The name of the corporation.
- (2) The state of its incorporation.
- (3) The address of its registered office.
- (4) If a foreign corporation, the address of its registered office, if any, in this Commonwealth.
- (5) The number and class of shares transferred to the corporation.
- (6) The names, addresses and ages of the directors of the corporation.
- (7) The names, addresses and ages of the officers of the corporation.
- (8) The names and addresses of registered stockholders.
- (9) A statement to the effect that if there is a change in the status of the corporation with respect to the matters set forth in paragraphs (5) to (7) inclusive, that it shall forthwith file with the corporation a new affidavit setting forth such change in status; and, in the case of paragraph (8), that it shall annually, during the month of October, file with the corporation a new affidavit setting forth any change in status; provided, however, that new affidavits need not be filed if the only changes are changes in the age or address of officers, directors or stockholders.

(b) *Affidavits of officers, directors, stockholders and other persons connected with such corporations.* In addition to the affidavit required under subsection (a), the corporate stock transferee shall file an affidavit in duplicate containing the information set forth in subsection (a), executed by the following:

- (1) Each of the directors and officers of such corporation.

(2) In the case of a corporation having 25 stockholders or less, each stockholder of such corporation.

(3) In the case of a corporation having more than 25 stockholders, each stockholder who holds 10% or more of the voting stock where voting is issued or transferred to a corporation and each stockholder who holds 25% or more of the voting stock where nonvoting stock is issued or transferred to a corporation.

(4) Every person who possesses, either directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation whether through ownership of voting securities, by contract, or otherwise, where voting stock is issued or transferred to a corporation.

(c) *Change of status of affiant other than by stock transfer.* If, subsequent to the filing of any affidavit required under subsections (a) and (b), the status of any affiant changes with respect to any of the matters set forth in subsection (a)(5) to (8), inclusive, in the case of a corporate affiant, and § 165.51 (a)(5) to (12) (relating to individual stockholders—voting and nonvoting stock) in the case of individual affiants, such affiant shall forthwith file with the corporation with which his affidavit was originally filed a new affidavit setting forth with particularity such change; provided, however, that new affidavits need not be filed by a corporate affiant if the only changes are changes with regard to the age or address of officers, directors or stockholders and that in the case of Item (8) of Section 2, Clause (a), new affidavits need be filed annually, during the month of October only.

Cross References

This section cited in 58 Pa. Code § 165.13 (relating to filing of information concerning stock transfers); and 58 Pa. Code § 165.31 (relating to occupational and participation licenses).

§ 165.53. Partnership stockholders.

(a) *Requirement to obtain affidavit.* Whenever a transfer of stock of any corporation which is licensed by the Commission, or of any corporation which leases to such licensee the track at which it conducts pari-mutuel thoroughbred horse races, or which owns 25% or more of the stock of such licenses, shall be made to a partnership, said corporation shall obtain contemporaneously with said transfer, whether original issuance or otherwise, an affidavit, in duplicate, executed by a general partner containing the following:

- (1) The trade name of the partnership.
- (2) The address of its principal office.
- (3) If a foreign partnership, the address of its principal office, if any, in this Commonwealth.
- (4) The names, addresses, and ages of all the general and limited partners, designating which partners are general and which are limited.
- (5) The number of shares transferred to the partnership.

(6) A statement to the effect that if there is any change in the status of the partnership with respect to any of the matters set forth in paragraph (4), except with regard to a change of age or address, it shall forthwith file with the corporation a new affidavit setting forth such change of status.

(b) *Affidavits of partners.* In addition to the affidavit required under subsection (a) of this section, the partnership shall file affidavits, in duplicate, containing the information set forth in § 165.51(a) (relating to individual stockholders—voting and nonvoting stock), executed by every member of the partnership who possesses, either directly or indirectly, the power to cause the direction of the management and policies of the partnership, whether by contract or otherwise.

(c) *Change of status of affiant other than by stock transfer.* If subsequent to the filing of any affidavit required under subsections (a) and (b), the status of any affiant changes with respect to any of the matters set forth in subsection (a)(4) and (5), in the case of a partnership affiant, or in § 165.51(a)(5) to (12), inclusive, in the case of an individual affiant, such partnership shall forthwith file with the corporation with which his affidavit was originally filed, a new affidavit setting forth with particularity such change; provided, however, that new affidavits need not be filed if the only changes are changes relating to the age or address of the partners.

Cross References

This section cited in 58 Pa. Code § 165.13 (relating to filing of information concerning stock transfers); and 58 Pa. Code § 165.31 (relating to occupational and participation licenses).

§ 165.54. Unincorporated club or other unincorporated organization as stockholder.

(a) *Requirement to obtain affidavit.* Whenever a transfer of stock of any corporation which is licensed by the Commission, or of any corporation which leases to such licensee the track at which it conducts pari-mutuel thoroughbred horse races, or which owns 25% or more of the stock of such licensee, shall be made to an unincorporated club, organization or association (except a partnership), said corporation shall obtain contemporaneously with said transfer, an affidavit, in duplicate, executed by the President, Secretary, Treasurer, or other Executive Officer, containing the following:

- (1) The name of the club or organization.
- (2) The address of its principal office in this Commonwealth.
- (3) The number and class of shares transferred to it.
- (4) The names and addresses of all its directors, governors, trustees, or members of other types of a managing body.
- (5) The names and addresses of all of its officers.
- (6) The number of members.
- (7) The name and address of each member.

(8) A statement to the effect that if there is any change in its status with respect to any of the matters set forth in paragraphs (3) to (5) inclusive, it shall forthwith file with the corporation a new affidavit setting forth such change of status and, in the case of paragraphs (6) and (7), that it shall annually, during the month of October, file with the corporation a new affidavit setting forth any change in status; provided, however, that new affidavits need not be filed if the only changes relate to a change of address.

(b) *Affidavits of officers, directors, and the like.* In addition to the affidavit required under subsection (a) of this section, the club or organization shall file affidavits in duplicate, containing the information set forth in § 165.51(a) (relating to individual stockholders—voting and nonvoting stock), executed by the following:

(1) Each of the officers, directors, governors, trustees or members of other types of a managing body.

(2) In the case of such an organization which has 25 members or less, each member.

(c) *Change of status of affiant other than by stock transfer.* If subsequent to the filing of an affidavit required under subsections (a) and (b), the status of any affiant changes with respect to any of the matters set forth in subsection (a)(3) to (7), in the case of the affidavit filed by an unincorporated club, association, or organization, and in § 165.51 (a)(5) to (12) in the case of individual affiants, such affiant shall forthwith file with the corporation with which his affidavit was originally filed a new affidavit setting forth with particularity such change; provided, however, that new affidavits need not be filed if the only changes are related to age or address and that in the case of subsection (a)(6) and (7), new affidavits need be filed annually, during the month of October only.

Cross References

This section cited in 58 Pa. Code § 165.13 (relating to filing of information concerning stock transfers); 58 Pa. Code § 165.31 (relating to occupational and participation licenses).

§ 165.55. Additional information required when registered stockholder is not the sole beneficial owner.

If any registered stockholder provided for under this subchapter is not, or is not to be, the sole beneficial owner of such stock the registered stockholder shall annex to the affidavit required under this subchapter, and expressly state in said affidavit to be deemed a part thereof, a true and complete copy of all terms of the agreement pursuant to which the stock is to be so held by the registered stockholder, including a detailed statement of the interest therein of each person who is to have any interest in such stock. No person may hold stock as a registered stockholder for the benefit of any other person unless a duly executed agreement in writing exists setting forth all of the respective rights of the registered stockholder and the beneficial owner or owners, as well as all of the terms of the

agreement between the registered stockholder and such beneficial owner or owners, and the same is attached to said affidavit.

Cross References

This section cited in 58 Pa. Code § 165.13 (relating to filing of information concerning stock transfers); and 58 Pa. Code § 165.58 (relating to change of status of affiants who are beneficial owners).

§ 165.56. Affidavit of beneficial owners other than a registered stockholder.

Each person for whom stock, or any interest therein, is to be held by a registered stockholder shall be required to file an affidavit in duplicate setting forth the information required under § 165.51(a) (relating to individual stockholders—voting and nonvoting stock). To each of such affidavits shall be annexed, and expressly stated in such affidavit to be deemed a part thereof, a true and complete copy of all the terms of the agreement pursuant to which stock is to be so held by the registered stockholder, including a detailed statement of the interest therein of each person who is to have any interest therein. “Interest” as used in this section shall be construed and applied as the “holding of an interest” as defined in § 165.31 (relating to occupational and participation licenses).

Source

The provisions of this § 165.56 amended August 4, 1978, effective August 5, 1978, 8 Pa.B. 2194.

Cross References

This section cited in 58 Pa. Code § 165.13 (relating to filing of information concerning stock transfers); 58 Pa. Code § 165.57 (relating to beneficial ownership of stock by minors, incompetents and unascertained beneficiaries); and 58 Pa. Code § 165.58 (relating to change of status of affiants who are beneficial owners).

§ 165.57. Beneficial ownership of stock by minors, incompetents and unascertained beneficiaries.

(a) The affidavits required under § 165.56 (relating to affidavit of beneficial owners other than a registered stockholder) to be filed by persons having a beneficial interest in stock shall not be required where the registered stock transferee is:

- (1) the executor or administrator of a decedent’s estate or a trustee and the beneficiaries of the estate or trust are not ascertainable until some future time;
- (2) the guardian of an incompetent or minor; or
- (3) an individual who holds stock under the Uniform Gifts to Minors Act.

(b) The registered stock transferee in the instances covered by this section shall include in his affidavit required by this subchapter a complete statement of the names, addresses, and ages of the minors or incompetents and his family or

fiduciary relationship to each of them. In addition, the affidavit shall include in the case of an incompetent, the Court term and number in which the adjudication of incompetency was made.

(c) Affidavits as required by § 165.56 however, shall be submitted whenever any minor beneficiary attains his majority, an unascertained beneficiary is ascertained and an incompetent beneficiary is declared competent.

Cross References

This section cited in 58 Pa. Code § 165.13 (relating to filing of information concerning stock transfers); and 58 Pa. Code § 165.58 (relating to change of status of affiants who are beneficial owners).

§ 165.58. Change of status of affiants who are beneficial owners.

If, subsequent to the filing of an affidavit required under §§ 165.55—165.57 (relating to additional information required when registered stockholder is not the sole beneficial owner; affidavit of beneficial owners other than a registered stockholder; and beneficial ownership of stock by minors, incompetents, and unascertained beneficiaries), the status of any affiant changes with respect to any of the matters set forth in § 165.51(a) (5) to (12) of this title (relating to individual stockholders—voting and nonvoting stock), inclusive, such affiant shall forthwith file with the corporation with which his or its affidavit was originally filed, a new affidavit, in duplicate, setting forth with particularity such change.

Cross References

This section cited in 58 Pa. Code § 165.13 (relating to filing of information concerning stock transfers).

§ 165.59. Debenture holders.

Every corporation licensed by the Commission, or which leases to such licensee the track at which it conducts pari-mutuel thoroughbred horse races, or which owns 25% or more of the stock of such licensee, shall annually, during the month of October, forward to the Commission the names and addresses of all record holders of registered debentures and coupon debentures registered as to principal.

Cross References

This section cited in 58 Pa. Code § 165.13 (relating to filing of information concerning stock transfers).

§ 165.60. Affidavits to be filed with the Commission.

Each corporation required to obtain affidavits under this subchapter shall forthwith file with the Commission within ten days after receipt by the corporation one of each of the duplicate affidavits obtained by it.

Cross References

This section cited in 58 Pa. Code § 165.13 (relating to filing of information concerning stock transfers).

§ 165.61. Duty of corporate licensees.

(a) Each association, firm, or corporation participating in the management of any corporation licensed by the Commission to engage in any activity connected with pari-mutuel racing, shall provide the Commission with a complete list of all of its stockholders indicating the number of shares held by each stockholder, once a year as per the direction of the Commission to designated representative. Each licensee shall within ten days after any transfer of stock in such licensee notify the Commission of such transfer with the name of the transferee and the number of shares held by such transferee.

(b) The Commission shall maintain a docket at its principal office in Harrisburg, Pennsylvania, setting forth the names of all shareholders in all corporations licensed under the State Horse Racing Law (15 P. S. §§ 2651—2675). Said docket shall include the number of shares held by each shareholder, the date of acquisition of such shares and the date of subsequent transfer by such shareholder in the event of divestiture of the shares. This docket shall be available for public inspection during normal business hours.

Cross References

This section cited in 58 Pa. Code § 165.13 (relating to filing of information concerning stock transfers).

§ 165.62. Forfeiture of property rights in the stock held in trust.

No property rights shall exist in any shares of stock of any association or corporation which holds any license from the Commission, or any firm, association, or corporation which owns or leases to any licensed corporation a race track at which pari-mutuel racing is conducted, or any firm, association, or corporation which participates in the management of any association or corporation which holds a license from the Commission which are held in trust for the benefit of a person who is prohibited under the State Horse Racing Law (15 P. S. §§ 2651—2675) and the provisions of this part from having any legal or beneficial interest in such stock, nor in having any shares of stock held in trust or for the benefit of another person unless the trust or the agreement under which said stock is held for another person is in writing. Upon final adjudication of forfeiture of stock pursuant to any suit brought by the Attorney General under section 8(d) of the State Horse Racing Law (15 P. S. § 2658), the Commission shall sell such stock as may be forfeited as a result of said final adjudication at public sale upon proper notice to the highest public bidder. The place and time of sale together with the form of notice shall be such as may be determined by the Commission in each instance.

Cross References

This section cited in 58 Pa. Code § 165.13 (relating to filing of information concerning stock transfers).

§ 165.63. Exception.

Where, in the opinion of the Commission, the application of this subchapter would create a hardship without attending benefit, the Commission may accept affidavits especially prescribed by it for particular situations and waive the requirements set forth under this subchapter.

Cross References

This section cited in 58 Pa. Code § 165.13 (relating to filing of information concerning stock transfers).

Subchapter D. REQUIREMENTS FOR TRACKS AND RELATED REGULATIONS

- Sec.
- 165.71. Requirements of finished track; electrical appliances.
 - 165.72. Approval of architect's plans and final construction.
 - 165.73. Wagering on races.
 - 165.74. Bookmaking.
 - 165.75. Solicitation of wagers.
 - 165.76. Conditions of license.
 - 165.77. Blacksmiths.
 - 165.78. Policing of premises.
 - 165.79. Supervision of vendors.
 - 165.80. Drinking fountains and rest rooms.
 - 165.81. Inspection of premises.
 - 165.82. Report on arrival and departure of horses.
 - 165.83. Watchmen in stable area.
 - 165.84. Duties of watchmen.
 - 165.85. Stable enclosures fenced.
 - 165.86. First aid facilities.
 - 165.87. Ambulances.
 - 165.88. Promotion of admission sales.
 - 165.89. Film patrol.
 - 165.90. Admission to premises and security.
 - 165.91. Temporary permit.
 - 165.92. Identification cards and badges.
 - 165.93. Undesirable persons.
 - 165.94. Number of races.
 - 165.95. Office facilities for Commission.
 - 165.96. Association with undesirables.
 - 165.97. Refunds.

§ 165.71. Requirements of finished track; electrical appliances.

To conduct a race meet under a license issued by the Commission, the licensee shall at all times maintain a finished race track which meets the requirements of the Commission. The licensee shall:

- (1) file with the Commission a certificate of a licensed civil engineer or registered surveyor that he has measured said track in the manner designated by the Commission and certifying in linear feet the results of all such measurements. Said certificate shall also certify the surveying of the turns and the results thereof.
- (2) maintain sufficient and adequate equipment and competent personnel for the purpose of continued maintenance of the race course and plant grounds in a proper and safe condition at all times.
- (3) erect and maintain at the cost of the licensee a detention barn for the purposes of restricting and isolating the horses designated by the Commission for testing procedures. Such barn to be constructed in accordance with specifications furnished by the Commission. Licensee shall also from time to time furnish such equipment in the said detention barn as the Commission may designate.
- (4) maintain an electrical wiring system of the quality intended to prevent electrical fires.
- (5) prevent the use of electrical appliances or equipment by anyone on circuits located particularly in stable areas where such use does or could overload the circuit.

§ 165.72. Approval of architect's plans and final construction.

(a) *Approval by Commission.* Construction or renovation of a licensee's track, plant and all of the facilities thereof, shall not be commenced before the Commission shall have approved architect's plans therefor.

(b) *Submission of architect's plans.* Each licensee shall submit one set of architect's plans to the Commission and one set of plans to an architect or engineer designated by the Commission prior to the commencement of any construction or renovation of its track, plant or any of the facilities thereof.

(c) *Consulting engineer or architect.* The Commission may designate a consulting engineer and/or architect who shall examine all plans submitted to it by a licensee and who shall report to the Commission the results of its examination. The fees of such consultant shall be approved by the Commission and paid by the licensee.

(d) *Periodic inspections.* The consultant shall make periodic examinations of the construction or renovation as directed by the Commission and report his findings to the Commission. Such consultant shall, in advance, prepare and submit to the Commission a schedule of anticipated periodic inspections.

(e) *Approval of final construction.* Before the Commission shall approve any construction or renovation purported to be complete by the licensee, the Commission shall obtain a report from the consultant who shall advise the Commission whether the construction or renovation has been completed in compliance with the plans submitted and approved.

§ 165.73. Wagering on races.

No licensee shall permit wagers to be made on the grounds of the meet conducted by said licensee on any race held outside of the grounds, and no foreign book or gambling device of any kind shall be permitted on said grounds. Any person utilizing in any manner, any device, sign, action, or mechanism for the purpose of transmitting or communicating any information with regard to any race from within the track grounds to the outside thereof shall be expelled from the grounds and denied further admission to any track licensed by the Commission.

§ 165.74. Bookmaking.

Anyone guilty of making a handbook on the grounds of any licensee, shall be expelled from the grounds, and denied further admission thereto, and any owner, jockey, trainer, or other person interested in any horse or horses at said meet, who shall be guilty of wagering with or through any such handbook, shall be expelled from the grounds or denied admission by order of the Stewards.

§ 165.75. Solicitation of wagers.

If any owner, trainer, jockey, stable employe, or other person solicits wagers from the public by correspondence or other methods, to be made on the horses in any stable, such person or persons so offending shall be ruled off the course or denied admission by order of the Commission or the Stewards.

§ 165.76. Conditions of license.

Imposed on each corporation licensed and other licensees is the duty of enforcing and obeying the rules and regulations imposed by the Commission, the said rules and regulations being a condition under which the licenses are granted. The Commission reserves the right to amend, alter or repeal any rule, regulation, or condition herein imposed or to supplement said rules and regulations.

§ 165.77. Blacksmiths.

Each licensee shall provide within its grounds suitable blacksmith shops and a sufficient number of blacksmiths to adequately accommodate the number of horses racing during each racing day.

§ 165.78. Policing of premises.

(a) The licensee shall provide a sufficient number of guards and watchmen to maintain order on all parts of the racing enclosure. The licensee shall designate one of the security personnel as a fire marshal with responsibility for fire safety on all parts of the racing enclosure. Each licensee shall submit to the Commission, for its approval the entire policing plans of the licensee, together with a list of personnel performing policing duties. This plan and such list shall be kept current by the licensee and all changes shall be made known to the Commission forthwith. The licensee shall daily file with the Commission a report relating to all security activities. Such report shall be executed by the Chief Security Officer as well as by the licensee.

(b) The licensee shall post by all principal entrances to the track notice that no person actually and apparently under the age of ten years shall be admitted to a meeting and no person actually and apparently under 18 and 10 years of age or over shall be permitted to attend a meeting, who is not in fact an employe then engaged in his or her occupation at the track, or is not accompanied by his or her parent or guardian. The racing association shall be responsible for the due and faithful enforcement of the provisions of this section. Both they and Commission Administrative Officers at the track shall upon request prepare and file periodic reports of the enforcement and any infraction with the Commission Director of Enforcement and will take such additional corrective or preventative measures as the Commission may from time to time prescribe.

Source

The provisions of this § 165.78 amended April 14, 1978, effective April 15, 1978, 8 Pa.B. 1114.

§ 165.79. Supervision of vendors.

The licensee shall supervise the practice and methods of so-called merchandise vendors who may have entry to the track enclosure to solicit among the employes and other licensees engaged at the track, provided, however, that the licensee shall not, by virtue of this section or otherwise, restrict purchasing or attempt to control or monopolize the proper selling of merchandise to owners, trainers, or stable employes. Each so-called merchandise vendor shall be licensed by the Commission. Each licensed vendor shall submit a list of his wares to the Stewards. A licensed vendor dealing with medicines for horses shall also submit a list of medicines or preparations he intends to sell to the Commission Veterinarian for his approval. No sale may be made of any medicine, preparation, or other wares prior to such approval. No merchandise vendor shall be permitted access to the stable area within three hours of any post time.

§ 165.80. Drinking fountains and rest rooms.

The licensee shall furnish an adequate number of free drinking water fountains, comfort stations, and wash rooms throughout its grounds and buildings for the use of the public.

§ 165.81. Inspection of premises.

The Commission shall have the right to authorize a person or persons to enter in or upon the stables, rooms, or other places within the track enclosure or places where horses are kept, for the purpose of and to inspect and examine the personal effects, or property within such places of every employe, trainer, jockey, stable foreman, groom, authorized agent, veterinarian, or other person licensed by the Commission, or required to be so licensed.

§ 165.82. Report on arrival and departure of horses.

All horses arriving at or leaving a racing meet must be registered at the gate with a gateman or platform attendant. Complete information regarding such arrival or departure is to be obtained. Separate reports must be filed for each owner represented in each shipment. A copy of each arrival or departure report must be delivered to the Racing Secretary of the licensee each morning before 10:00 a.m. It shall be the duty of the Racing Secretary to transmit a duplicate copy thereof to the Commission.

§ 165.83. Watchmen in stable area.

Each licensee shall, during any racing meet, or while horses are stabled upon the grounds, maintain and furnish complete watchman service night and day in and about all stable enclosures and furnish to the Commission each day a complete tabulation list thereof showing name, duty, place stationed, and portions of enclosures supervised by such watchmen.

§ 165.84. Duties of watchmen.

(a) Watchmen so employed shall be individually responsible for a particular part of the stable enclosure where they are on duty and they shall immediately investigate and report the presence of anyone during the night or day who may be within said stable enclosure without possessing proper credentials.

(b) A letter of instructions to all watchmen shall be addressed to each of them by the licensee. Such letter shall fully cover their duties and obligation to keep stable enclosures free from unauthorized persons. A copy thereof shall be furnished to the Commission. Each licensee shall install watchmen clocks at strategic positions which shall disclose the time the watchmen checked thereat.

§ 165.85. Stable enclosures fenced.

All such stable enclosures must be properly fenced and admission granted only to authorized persons. No smoking or carrying a lighted cigar, cigarette, or pipe shall be permitted under the shed.

§ 165.86. First aid facilities.

Each licensee shall maintain and furnish adequate first aid facilities including rooms and equipment, as shall be approved by the Commission. Each licensee shall also make available upon its plant grounds, the services of a physician and registered nurse during all racing hours.

§ 165.87. Ambulances.

Each licensee shall maintain and furnish at least one adequate ambulance for the exclusive use of horses and a separate ambulance for the exclusive use of persons upon the plant grounds.

§ 165.88. Promotion of admission sales.

No licensee may conduct, sponsor, or enter any arrangement intended to promote the sale of admission tickets, directly or indirectly, without first obtaining the consent of the Commission. The purpose of this section is to avoid the use of other than legitimate advertisement procedures.

§ 165.89. Film patrol.

(a) *Film patrol system required.* Every licensee shall install and operate a system, approved in advance by the Commission for taking motion pictures or videotape film and finish photographs of every race in such manner that the pictures will show the position and action of all horses and jockeys in such clear images and at such range or distance to be clearly and easily discernible. Provision shall be made for the immediate development and delivery of such films or tapes to the stewards after each race.

(b) *Projection room.* A convenient, large and properly equipped projection room shall be provided by the licensee for the viewing of such pictures.

(c) *Mutilation of film.* No one shall cut, mutilate or change any film patrol picture.

(d) *Identification.* All pictures shall be identified by indicating thereon the day, the number of the race and the name of the track of the licensee at which the race was held.

(e) *Viewing of films.* In the event of a foul being claimed by any person or observed by the officials, or any protest made concerning the running or order of finish of any race, no decision shall be rendered by the Stewards until they have viewed the photographs of such race. The viewing of the films or tapes of a race prior to rendering any such decision, may be waived by the Stewards when in

their opinion conditions were such that a clear viewing cannot be obtained from the film or when the foul was such as was clearly observed by the officials.

(f) *Review of films by officials and jockeys.* Not later than the next succeeding day of racing, the Stewards and other officials and all jockeys participating in the preceding day of racing unless excused by the stewards for good cause, shall view the photographs of all races. Trainers, owners, and other jockeys may, subject to the convenience of the facilities, view the pictures and hear the discussion of each race in order that the stewards, may point out to the jockeys any infractions that may have occurred. The Stewards shall have the power to order any trainer or jockey to attend a viewing.

(g) *Preservation of films.* Each licensee shall maintain ample facilities for the safe storage of films and videotapes and shall carefully preserve all films and tapes for no less than ninety days after each race. Any films or tapes of races in which claims of foul, objections, or other disputes are raised shall be preserved until any review or litigation thereof is complete and until permission to abandon such film is received in writing from the Commission.

Source

The provisions of this § 165.89 amended March 4, 1977, effective March 5, 1977, 7 Pa.B. 614.

§ 165.90. Admission to premises and security.

No person other than members, officers, and employes of the Commission, racing officials, and security officers of the licensee shall be permitted to enter any part of the licensed premises, except the Club House, Grandstand, or other area open to patrons, or the general public, unless he possesses and displays an identification card or badge, authorizing his admittance thereto or possesses or displays a temporary identification permit to enter the particular area. Only the following listed persons shall be entitled to enter the stable area of a licensee: members, officers, and employes of the Commission; management and employes of management performing duties therein; racing officials; security officers of licensee; owners; trainers; grooms and others performing official duties in the stable area.

§ 165.91. Temporary permit.

The licensee may issue temporary identification permits for proper reasons only to persons of good moral character who have a legitimate purpose for entering any such enclosure not open to the general public. Such temporary permits may be taken up by the licensee at any time and shall be surrendered to the licensee when the particular purpose for which the permit was issued has been completed. Such permits shall be valid for a specific day only. They may be issued to a participant pending application and issuance of a license, for such participants as require a license. A list of such temporary permits shall be kept by

the licensee stating the reason for the issuance thereof and the time for which it was issued, and a copy thereof shall be furnished daily to the Commission.

Source

The provisions of this § 165.91 amended July 14, 1972, effective July 15, 1972, 2 Pa.B. 1341.

§ 165.92. Identification cards and badges.

(a) The licensee shall issue identification cards or badges only to its officers, employees, guards and watchmen, to jockeys, owners, trainers, their employees, assistants, grooms and attendants. The identification cards or badges may be taken up by the licensee upon reasonable cause and shall be taken up from owners, trainers, their employees, assistants, grooms and attendants when the horses of the owners or trainers are removed from the licensed premises.

(b) An Identification Button or Card shall be issued to those entitled to the stable area. The Button shall be worn openly at all times while performing duties in the area, and the Identification Card shall be displayed upon request by those guarding the area.

(c) An Identification Card or Button may be taken up by the direction of the Stewards upon reasonable cause and shall be taken from the owner, trainers and grooms when the horse of the owner, trainer or grooms are removed from the licensed premises.

Cross References

This section cited in 58 Pa. Code § 171.41 (relating to facility requirements); and 58 Pa. Code § 189.41 (relating to facility requirements).

§ 165.93. Undesirable persons.

A person whether a licensee, participant or patron whose conduct is deemed detrimental to the best interest of racing, or who is deemed an undesirable person, may be excluded or expelled from the track.

§ 165.94. Number of races.

A licensee may not hold in one day more races for which pari-mutuel wagering is conducted than are approved by the Commission.

§ 165.95. Office facilities for Commission.

A licensee shall maintain upon the track premises suitable office facilities for the exclusive use of the Commission and authorized representatives of the Commission.

§ 165.96. Association with undesirables.

(a) A licensee may not associate with a known gambler, bookmaker, tout or persons of similar pursuits on or off the tracks. If the reputation of the gambler,

bookmaker, tout or person of similar pursuit is notorious, the licensee shall be presumed to have knowledge of the fact.

(b) If a person under the jurisdiction of the Commission shall be approached with an offer, promise, request or a suggestion for a bribe or for an improper, corrupt or fraudulent act in relation to racing, or that a race shall be conducted otherwise than fairly and in accordance with the rules of this Commission, it shall be the duty of the person to immediately report the matter to the Commission or one of its appointed representatives.

Notes of Decisions

Section 163.6(d), unlike § 165.96(a) does not require that a licensee have knowledge that he is associating with an individual who has been convicted of a crime. *Luzzi v. State Horse Racing Commission*, 548 A.2d 659 (Pa. Cmwlth. 1988).

§ 165.97. Refunds.

(a) Moneys received by the Commission under the law or this part may, within 1 year from the receipt thereof, be refunded to the party for whose account the same were received, on proof that:

- (1) The moneys were in excess of the amount required.
- (2) The participation license for which application was made has been refused by the Commission.
- (3) The moneys were received as a fine and the Commission has, after review, reduced the amount thereof.
- (4) Upon appeal, the Court reduced or remitted the fine imposed and paid.

(b) The refunds shall be paid upon approval by the Commission and after approval by the Board of Finance and Revenue.

Subchapter E. PARI-MUTUEL WAGERING

Sec.

- 165.111. Pari-mutuel wagering.
- 165.112. Sale of pari-mutuel tickets.
- 165.113. Payments.
- 165.114. Daily Double.
- 165.115. Perfecta (Exacta).
- 165.116. Quiniela.
- 165.117. Big Perfecta (Exacta).
- 165.118. Trifecta.
- 165.119. Refunds.
- 165.120. Information required by Commission and Department of Revenue.
- 165.121. Record of unpaid tickets.
- 165.122. Record of actual payoff.
- 165.123. Report of handle and attendance.
- 165.124. Test of equipment.
- 165.125. Personnel.

165.126. Forms.

165.127. Odds board.

§ 165.111. Pari-mutuel wagering.

(a) All licensees shall use vending machines for the sale of pari-mutuel tickets, unless otherwise authorized by the Commission. All licensees shall be required to utilize total electronic calculators approved by the Commission.

(1) No electronic calculator may be deemed one of approved design unless it is capable of registering by automatic electronic or mechanical means on central aggregators all wagers made on each horse, entry, or the field, in each of the straight, place and show pools, and displaying the totals so registered in such a way as to permit ready tabulation thereof by the representative of the Commission.

(b) The controls necessary to operate the Odds Board in the infield, relative to the way the horses finish, (if the finish is being contested, if there is a photo, dead-heat, time of race) are to be located in the Stewards' Stand and controlled only by the Stewards.

§ 165.112. Sale of pari-mutuel tickets.

(a) Only one method of selling pari-mutuel tickets shall be used for the sale of tickets on races during any racing day.

(b) No pari-mutuel tickets shall be sold except through regular ticket windows properly designated by signs showing type of tickets sold at that particular window.

(c) No pari-mutuel tickets shall be sold on any race prior to 30 minutes before scheduled post time, except with the approval of the Commission. The sale of Daily Double tickets may begin one hour and fifteen minutes before the post time of the first race of the Daily Double.

(d) Bookmaking or wagering other than pari-mutuel wagering is strictly prohibited.

(e) No minor shall be allowed to wager.

(f) All wagering shall stop and all pari-mutuel machines shall be locked on post time or the actual start of all races, whichever shall first occur. Such machines shall be automatically locked by the control of the starter or by the Stewards as either case shall require in each race.

(g) When the sale of pari-mutuel tickets has closed, it shall remain closed until after the race has finished.

(h) No pari-mutuel ticket shall be sold for less than \$2.00 except with specific approval by the Commission. No pari-mutuel ticket combining Win and Place, Win and Show or Place and Show, shall be sold for less than \$4.00 except with specific approval by the Commission. No pari-mutuel ticket combining Win, Place and Show shall be sold for less than \$6.00 except with specific approval by the Commission.

(i) The method of selling pari-mutuel tickets shall be approved by the Commission.

(j) The Manager of the Pari-Mutuel Department shall be properly and timely advised by the Stewards prior to the beginning of wagering on each race, of the horses that will compete in the race and any changes from those listed in the official program.

(k) If less than six interests qualify horses to start in a race, the Manager of the Pari-Mutuel Department, with the consent of the representative of the Commission, shall be permitted to prohibit Show wagering on that race.

(l) If less than five interests qualify horses to start in a race, the said Manager, with the consent of the representative of the Commission, shall be permitted to prohibit both Place and Show wagering on that race.

(m) If less than three interests qualify horses to start in a race, the said Manager, with the consent of the representative of the Commission shall be permitted to prohibit wagering on the race.

(n) The said Manager, with the consent of the representative of the Commission, may prohibit wagering on any particular horse or entry in any race. Such consent shall be sought by the Manager of the Pari-Mutuel Department from the representative of the Commission after the entries are closed on the day previous to that during which the races in which exclusions are desired are to be conducted. Such exclusions, if consented to by the representative of the Commission, shall be clearly indicated on the program or score card and horses excluded shall be numbered so as to in no way infer that they are coupled in the field. Horses once excluded from the wagering shall remain excluded during the day or race in which they are scheduled to start.

(o) Coupled entries in Daily Double, Twin Double, or Perfecta races shall be allowed as provided in § 163.95 (relating to coupled entries).

(p) When one or more horses representing separate interests are started in a race than the number of post positions on the infield tote board, all horses in excess of a number of interests one less than the total number of post positions on the infield tote board shall be grouped in the wagering as the field.

(q) A refund cost value shall be made to all holders of a purchased ticket bearing the number of a horse in any race which has been scratched or withdrawn before said horse has become a starter in the race under the provisions of this part.

(r) No claims or assertions of any nature relating to any way to any alleged defect, misprint, or other form of error or mistake in the printing, imprinting, sale, or issuance or any pari-mutuel ticket will be entertained or allowed after the purchaser has left his place at the selling window. The act of removal from the selling window by any purchaser shall be conclusively deemed to be an acceptance of a ticket as actually printed and issued and to be an intentional, knowing waiver of any and all defects, mistakes, or errors thereon. Verification of the accuracy of all such tickets shall be the responsibility of the purchasers thereof.

(s) No person shall present or cause any pari-mutuel ticket to be presented or processed in return for payment of any commission, premium, discount, or other consideration of any nature other than the authorized pool payment to be distributed in full to the owner or owners thereof.

Source

The provisions of this § 165.112 amended through October 12, 1979, effective October 1, 1979, 9 Pa.B. 3473.

§ 165.113. Payments.

(a) Payments due on all wagers shall be made in conformity with the well established practice of the pari-mutuel system. The practice is to work in dollars and not in the number of tickets. Money wagered on winning tickets is returned in full, plus the profits. In all cases of a winning mutuel pool, each licensee must redistribute not less than \$2.20 on each \$2 wager, except that in a race in which there is a minus pool, the Association must distribute \$2.10 on each \$2 wager.

(b) Payments on all winning pari-mutuel tickets and tickets refundable according to rules shall be made only on presentation and surrender of the appropriate ticket. Mutilated tickets and those whose validity are questioned shall be submitted to the Department of Revenue for inspection and approval before payment.

(c) At the end of each race, the Placing Judges shall advise the Manager of the Pari-mutuel Department and the representative of the Commission in writing of the official placement of the horses. When no mechanical or electrical indication of the official finish of the race is used between the Placing Judges and the Mutuel Department, no payoff shall be made until receipt of such written notice.

(d) If a horse wins and there is no money wagered on him to win, the win pool shall be apportioned among the holders of the place tickets on that horse, if any, otherwise, holders of the show tickets.

(e) If no money has been wagered to place on a horse which is placed first or second in a race, the place pool for that race shall be apportioned among the holders of the place tickets on the other horse which was placed first or second.

(f) If no money has been wagered to show on a horse which has placed first, second, or third in a race, the show pool in that race shall be apportioned among the holders of show tickets on the other horses which are placed first, second, or third in that race.

(g) In the event that only two horses finish in any one race, the show pool shall be figured the same as the place pool and the monies apportioned to the holders of show tickets on the two finishing horses. In the event only one horse finishes in any one race, all three pools shall be figured separately as straight pools and all the monies shall be awarded to the ticket holders of the finishing

horse. In the event no horse finishes the race, then the entire pool shall be refunded to all ticket holders.

(h) If two horses finish in a dead heat for first place, the money in the win mutuel pool is divided between the two dead-heaters according to their proportionate shares in the pool.

(i) If two horses finish in a dead heat for second place, the division is made as follows: there shall be allotted to the pool of the winner of the race one-half of the place pool and the two dead-heaters one-half each of the remaining half of the place pool.

(j) If two horses coupled in the betting as an "entry" or "the field" finish first and second, first and third or second and third, the division of the net show pool shall be as follows: two-thirds of the net show pool shall be allotted to the pool of the entry and the balance one-third to the other horse.

(k) In the event that one horse of the entry or the field finishes first or second and the other part of the entry or field finishes in a dead heat for third with another horse, the division of the net show pool shall be as follows: one-half of the net show pool shall be allotted to the pool of the entry, one-third to the horse finishing first or second, and one-sixth to the horse finishing in the dead heat with the entry for third.

(l) If the entry or field horses should finish first, second, and third, then the entire money in each pool goes to the entry or field tickets, no other tickets participating.

(m) If an error is made in posting pay off figures on the public board and no payments have been made, it shall be corrected promptly and a statement explaining the facts made over the public address system forthwith. In the event of an error resulting in overpayment, any payments already made shall be deemed final and the recipients shall be entitled to retain the same. In the event of an error in calculations which results in an under payment and payments have already been made the amount of such under payment shall be promptly ascertained and confirmed by the representative of the Department of Revenue. Upon such confirmation, the under payment shall be transferred to the next corresponding pool on the racing program of the same day. In the event the amount of the under payment cannot be ascertained and confirmed before the conclusion of the racing program of the day, the under payment shall be escrowed by the Association and distributed in the pools of all races on the daily program next run. No such deferred redistribution of any under payment shall be undertaken without prior consent of the Commission. Any and all under payments shall be promptly and fully reported to the Department of Revenue and to the Commission. Any under payment not distributed or undistributable prior to the end of a meet shall be held in trust and transferred into the next corresponding pool of the next race meeting of the Association in question.

(n) All winning pari-mutuel tickets must be presented for payment before April 1st of the year following the year of their purchase and failure to present

any such ticket within the prescribed period of time shall constitute a waiver of the right to participate in the award or dividend. After April 1st of the year following the year of their purchase, all licensees shall forward to the State Treasurer all funds so held for such uncashed tickets. The Commission shall be notified by the licensee of the amounts so forwarded.

(o) No mutilated pari-mutuel ticket that is not easily identifiable as being a valid ticket shall be accepted for payment.

(p) No person acting alone or in concert with any other party or entity shall deface, alter, change, or attempt to duplicate or reproduce any pari-mutuel ticket or attempt to effect such a defacement, alteration, change, duplication, or reproduction nor shall any person or persons in any manner attempt to present or negotiate any such ticket for payment however or whenever the same may have been defaced, altered, changed, reproduced, or duplicated.

(q) No claims for a pari-mutuel ticket which the holder alleges he has lost or claims for a pari-mutuel ticket which is not in the possession of the holder, shall be considered for payment by any racing association or by the Commission.

Source

The provisions of this § 165.113 amended through October 23, 1981, effective October 24, 1981, 11 Pa.B. 3626. Immediately preceding text appears at serial page (51742).

§ 165.114. Daily Double.

(a) No Daily Double shall be conducted without permission of the Commission. There shall be no exchange of Daily Double tickets after the purchase thereof, all tickets on the Daily Double will be calculated in an entirely separate pool.

(b) In order to win a Daily Double, it is necessary for the purchaser of a Daily Double ticket to select the winners of each of the two races specified for the double. If either of his selections fails to win, his contract is void, except as hereafter provided.

(c) All tickets will be to win (Straight) only. Horses designated and listed as the "Field," race as one horse in the Daily Double. If two or more horses in a race are listed as "Field" on the same totalisator ticket, there shall be no refunds, unless all the horses so listed are excused before "off" time.

(d) Selections are to be made of one horse for each of two races in the Daily Double by "Tote" program numbers.

(e) If no ticket is sold combining the two winners of the Daily Double, the pool shall then be apportioned equally between those having tickets including the winner in the first race of the Daily Double and those having tickets including the winner in the second race of the Daily Double in the same manner in which a Place Pool is calculated and distributed.

(f) If no ticket is sold on the winner of the first race of the Daily Double on any combination, the entire pool is apportioned to the holder of tickets on the winner of the second race of the Daily Double. Likewise, if no ticket is sold on the winner of the second race of the Daily Double on any combination, the entire pool is apportioned to the holders of tickets on the winner of the first race of the Daily Double.

(g) If a dead heat to win should result in either the first or second race of the Daily Double, the total pool is calculated as a place pool. In case of a dead heat for the winner of the first race of the Daily Double, the posting of payoff prices will be made after winner of second race of the Daily Double is Official.

(h) Should no ticket be sold containing the numbers of either winner on any combination, the pool shall be allotted to those having tickets on horses finishing next to the winners.

(i) In the event any horse or horses in the first half of the Daily Double should be excused by the racing officials after the horses shall have left the paddock for the post, or after the betting on the Daily Double has been closed, or should any horse or horses in the first half of the Daily Double be prevented from racing because of failure of the starting gate to open, the money wagered on any horse or horses so excused or prevented from racing shall be deducted from the Daily Double Pool and refunded to the purchaser or purchasers of tickets on the horse or horses so excused or prevented from racing.

(1) Should any horse or horses be scratched, excused by the racing officials, or prevented from racing because of the failure of the starting gate to open in the last half of the Daily Double, all tickets combining such horse or horses with the winner of the first race of the Daily Double shall become consolation tickets and shall be paid a price per dollar bet determined as follows: the net Daily Double Pool (the gross Daily Double Pool less tax) shall be divided by the total purchase price of all Daily Double tickets designating the winner of the first half of the Daily Double and the quotient attained shall constitute the price to be paid. The total amount payable on consolation tickets shall be deducted from the net Daily Double Pool.

(j) The possible payoff prices shall be posted or announced to the public before the start of the last race of the Daily Double, and as soon as possible after the horses in the race of the last half of the Daily Double have entered upon the track on the way to the post.

(k) In case the second half of the Daily Double is not raced due to rain, or for any other cause, the entire pool shall be apportioned and paid, less commission, to the holders of tickets on the winner of the first race of the Daily Double.

(1) If a Daily Double is scheduled to be held, subsections (a)—(k) inclusive of this Rule shall be printed on the day's racing program and notice printed on said program as follows: "Retain your tickets until the result of the Daily Double has been posted."

Source

The provisions of this § 165.114 amended through March 4, 1977, effective March 5, 1977, 7 Pa.B. 613.

§ 165.115. Perfecta (Exacta).

(a) No Perfecta (Exacta) wagering shall be conducted without permission of the Commission. The races in which Perfecta (Exacta) type pari-mutuel wagering will be permitted shall only be those designated by the Commission and separate pools shall be established therefor.

(b) To win a Perfecta (Exacta), it is necessary for the purchaser of a Perfecta (Exacta) ticket to select in order the horse declared the winner and the horse declared to have placed in the race in which Perfecta (Exacta) type wagering is permitted. If either of the selections made by the purchaser fails to be declared to have finished in the position designated by the purchaser when purchasing the Perfecta (Exacta) ticket, then the contract is void except as hereinafter provided.

(c) Should there be a dead heat to win in a Perfecta (Exacta) race, holders of tickets combining those two horses in either order will share in the Perfecta (Exacta) payoff. Should there be a dead heat for place, holders of tickets combining the horse declared the winner with either of the horses declared to have finished in the dead heat for place shall share in the Perfecta (Exacta) payoff. In both of the aforementioned instances, the net pool shall be distributed and calculated in the same manner as a Place Pool.

(d) If no ticket is sold combining in order the horse declared the winner and the horse declared to have placed, the Perfecta (Exacta) pool shall be apportioned between those having tickets selecting to win the horse declared the winner and those having tickets selecting to place the horse declared to have placed and the net pool shall be distributed and calculated in the same manner as a Place Pool.

(e) In the event any horse or horses in the Perfecta (Exacta) should be excused by the racing officials after the horses shall have left the paddock for the post, or after the betting on the Perfecta (Exacta) has been closed, or should any horse or horses in the Perfecta (Exacta) be prevented from racing because of failure of the starting gate to open, the money wagered on any horse or horses so excused or prevented from racing shall be deducted from the Perfecta (Exacta) Pool and refunded to the purchaser or purchasers of tickets on the horse or horses so excused or prevented from racing.

(f) In the event only one horse finishes the race and is declared the winner, the net pool shall be distributed to holders of Perfecta (Exacta) tickets designating to win the horse declared the winner.

(g) "Fields" are permitted in a Perfecta (Exacta) race. If two or more horses in a Perfecta (Exacta) race are listed as the "Field" on totalisator tickets they shall be counted as a single selection for determining the order of finish. In the event two field entries finish in first and second place, only the one finishing first

shall be deemed a winning entry for Perfecta (Exacta) purposes and the next closest non-field entry shall be deemed the second place finisher for Perfecta (Exacta) wagers. There shall be no refunds for field entries, unless all the horses listed in the field are excused before "off" time.

Source

The provisions of this § 165.115 amended through November 24, 1978, effective November 24, 1978, 8 Pa.B. 3341.

§ 165.116. Quiniela.

(a) No Quiniela wagering shall be conducted without permission of the Commission. The races in which Quiniela-type pari-mutuel wagering will be permitted shall only be those designated by the Commission and separate pools shall be established therefor.

(b) The principle of a Quiniela is, in effect, a contract by the purchaser of a Quiniela ticket to select the first two horses to finish in a race. The order in which the horses finish is immaterial. The Quiniela is not a "parlay" and has no connection with or relation to win, place or show betting, and will be calculated in an entirely separate pool.

(c) (Reserved).

(d) In cases of a dead heat between the two horses for first place, the combination shall be the winner of the Quiniela pool.

(e) In case of a dead heat between two horses for second place, the pool shall be figured as a Place pool, the holders of tickets combining the winning horse and the two horses finishing second participating in the payoff.

(f) In case of a dead heat for second place, and no ticket is sold on one of the two winning combinations, the entire net pool shall be calculated as a win pool and distributed to those holding tickets on the winning combination.

(g) If no ticket is sold on the winning combination of a Quiniela pool, the net pool shall be apportioned equally between those having tickets including the horse finishing first and those having tickets including the horse finishing second, in the same manner in which a place pool is calculated.

(h) If no ticket is sold that would require distribution of a Quiniela pool to a winner as above defined, the licensee shall make a complete and full refund of the Quiniela pool.

(i) In case of a scratch in a Quiniela race, the patron holding a ticket on the scratched horse will receive a refund.

Source

The provisions of this § 165.116 amended March 4, 1977, effective March 5, 1977, 7 Pa.B. 613.

§ 165.117. Big Perfecta (Exacta).

(a) No Big Perfecta (Exacta) wagering shall be conducted without permission of the Commission. The races in which Big Perfecta (Exacta) type pari-mutuel wagering will be permitted shall only be those designated by the Commission and separate pools shall be established therefor.

(b) The Big Perfecta (Exacta) is a form of pari-mutuel wagering in which the bettor selects the two horses that will finish first and second in each of two consecutive races in the exact order as officially posted.

(c) Big Perfecta (Exacta) tickets shall be sold only at Big Perfecta (Exacta) windows by the licensee and only from automatic double issue machines.

(d) Each bettor purchasing Big Perfecta (Exacta) tickets shall designate his two selections as the first two horses to finish in that order in the first race of the two consecutive races.

(e) After the official declaration of the first two horses to finish in the first race of the Big Perfecta (Exacta), each bettor holding a ticket combining the first two horses in the exact order of finish must, prior to the running of the second Big Perfecta (Exacta) race, exchange such winning ticket for a Big Perfecta (Exacta) exchange ticket at the Big Perfecta (Exacta) windows and at such time shall select the two horses to finish in the second race of the Big Perfecta (Exacta) in the exact order as officially posted. No further money shall be required of the holder of the ticket in order to make the exchange.

(f) No Big Perfecta (Exacta) exchange ticket upon the second race shall be issued except upon the surrender of the Big Perfecta (Exacta) ticket from the first race as described in these rules. The Big Perfecta (Exacta) pool obtained from the sales of Big Perfecta (Exacta) tickets upon the first race shall be held, subject to these rules, and divided among the winning tickets of the Big Perfecta (Exacta) exchange tickets, subject to these rules to the contrary. Big Perfecta (Exacta) windows shall be open for the purpose of making the exchange as described only after the first race has been declared official and such windows shall close at official post time at the start of the second race of the Big Perfecta (Exacta) races.

(g) If a winning Big Perfecta (Exacta) ticket from the first race is not presented for exchange within the time provided, the bettor forfeits all rights to any distribution or refund except in the event the second half of the Big Perfecta (Exacta) is cancelled or declared "No Race" or if no exchange ticket includes either the first or second horse of the second half of the Big Perfecta (Exacta).

(h) If a horse is scratched in the first race of the Big Perfecta (Exacta) races, all Big Perfecta (Exacta) tickets on the scratched horse will be refunded.

(i) If a horse is scratched in the second race of the Big Perfecta (Exacta), all exchange tickets combining the scratched horse shall become consolation tickets and shall be paid a price per dollar denomination calculated as follows: the net Big Perfecta (Exacta) pool (gross pool less commission) shall be divided by the total purchase price of all tickets combining the winners of the

first race of the Big Perfecta (Exacta). The quotient thus obtained shall be the price to be paid to holders of exchange tickets combining the scratched horse in the second race of the Big Perfecta (Exacta). The entire consolation pool (number of eligible tickets times the consolation price) plus the breakage shall be deducted from the net Big Perfecta (Exacta) pool.

(j) If no Big Perfecta (Exacta) ticket is sold as a winning combination in the first race of the Big Perfecta (Exacta), the Big Perfecta (Exacta) pool shall be divided among those having tickets including the horse finishing first or second and such distributions shall be calculated and made as a place pool. In such an instance the Big Perfecta (Exacta) race shall end and the pool be closed for the day.

(k) If no Big Perfecta (Exacta) exchange ticket is sold on the winning combination, the net pool shall then be apportioned equally between those having tickets including the horse finishing first and those having tickets including the horse finishing second in the same manner in which a place pool is calculated and distributed.

(l) If a Big Perfecta (Exacta) exchange ticket combines only one of the two winners and no Big Perfecta (Exacta) exchange ticket combines the other winner, the entire pool shall be distributed as a straight pool to the holders of those tickets.

(m) If no exchange ticket includes either the first or second horse of the second half of the Big Perfecta (Exacta) the entire net pool shall be distributed as a straight pool to all holders of exchange tickets and winning combinations of the first half that have not been exchanged.

(n) In the event of a dead heat for place in the first race of the Big Perfecta (Exacta) races, all Big Perfecta (Exacta) tickets combining the first horse and either of the place horses shall be eligible for exchange for Big Perfecta (Exacta) exchange tickets.

(o) In the event of a dead heat for place in the second race of the Big Perfecta (Exacta) races, the Big Perfecta (Exacta) pool shall be divided, calculated, and distributed as a place pool to the holders of Big Perfecta (Exacta) exchange tickets combining the first horse and either of the place horses. In the event of the dead heat to place and there are no tickets sold on one combination, then the other combination having the winning horses, shall be declared the winner. If no exchange tickets combine the winning horse with either of the place horses in the dead heat, the Big Perfecta (Exacta) pool shall be calculated and distributed as a place pool to holders of tickets representing any interest in the net pool.

(p) If for any reason the second of the Big Perfecta (Exacta) races is cancelled or declared "No Race," the pool shall be calculated as a straight pool and shall be distributed among the holders of the tickets combining the first two horses of the first race of the Big Perfecta (Exacta) otherwise eligible for Big Perfecta (Exacta) exchange tickets and also distributed to holders of the Big Perfecta (Exacta) exchange tickets.

(q) If there is a dead heat for the winning horse in either of the two consecutive races for the Big Perfecta (Exacta), holders of tickets combining those horses in either order will be entitled to participate in the Big Perfecta (Exacta), as prescribed in these rules.

(r) Sale of the Big Perfecta (Exacta) tickets other than through pari-mutuel machines or from one individual to another shall be deemed illegal and prohibited.

Source

The provisions of this § 165.117 amended January 28, 1972, effective January 29, 1972, 2 Pa.B. 123.

§ 165.118. Trifecta.

(a) No trifecta wagering may be conducted without permission of the Commission. The only races in which “trifecta” type pari-mutuel wagering is permitted, are those races designated by the Commission and a separate pool is established therefor.

(b) The trifecta is a form of pari-mutuel wagering in a single race in which the bettor selects a ticket combining in exact finishing order, as officially posted the first, second and third place winner.

(c) Trifecta tickets shall be sold only at trifecta windows by the licensee.

(d) The trifecta is not a parlay and except as set forth in this section, has no connection with or relation to the win, place and show betting and will be calculated as an entirely separate pool.

(e) Trifecta tickets shall be sold in at least \$2 denominations or in such denominations as from time to time are approved by the Commission.

(f) If no ticket is sold on the winning combination of a trifecta pool, the net pool shall be distributed to the holders of tickets selecting the win and place finishers in that order. If no ticket is sold combining the win and place finish, the net pool will be distributed to the holders of tickets selecting the winner. If less than three horses finish, the payoff will be made to holders of tickets selecting the finishing horses in order, ignoring the balance of the selection.

(g) If no ticket is sold that would require distribution of the trifecta pool to a winner defined in this section, the licensee shall make a complete and full refund of the Trifecta Pool.

(h) In the event of a dead heat or dead heats, all trifecta tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in either position dead heated, shall be winning tickets. The payoff will be calculated as a place pool by dividing the net trifecta pool by the total purchase price of winning tickets.

(i) In the event of a scratch in the trifecta no exchanges will be made. All tickets which include the scratched horse are eliminated from further participation in the trifecta pool and will be refunded.

(j) Coupled entries and fields are allowed in trifecta races as set forth in § 163.95 (relating to coupled entries).

(k) Trifecta tickets shall be sold only by the licensee through pari-mutuel machines programmed to print all selections on one ticket. Resale of these tickets from one individual to another is prohibited and shall be grounds for ejection.

(l) Each association shall print in heavy type in a conspicuous place in its daily printed program all the provisions of this section and post printed copies of this section about the track in places as it deems available.

Source

The provisions of this § 165.118 amended through November 7, 1980, effective November 8, 1980. 10 Pa.B. 4300; amended October 1, 1999, effective October 2, 1999, 29 Pa.B. 5094. Immediately preceding text appears at serial pages (239906) to (239907).

§ 165.119. Refunds.

(a) Any ruling of the Stewards or of the Commission with regard to the award of purse money made after the sign "official" has been purposely displayed shall have no bearing on the mutuel payoff.

(b) In all cases when a horse has been excused by a racing official after wagering has started, but before the horses shall have actually started, all money wagered on the horse so excused shall be deducted from the pool and refunded.

(c) If two or more horses in a race are coupled on the same mutuel ticket, there shall be no refunds unless all of the horses so coupled are excused before the actual start.

(d) In the case of a race being declared off or postponed to another day by the Stewards after the wagering has begun, all money wagered in that race shall be refunded.

§ 165.120. Information required by Commission and Department of Revenue.

The officers and employes of the licensee shall promptly give the Department of Revenue and the Commission such information as they may request from time to time and shall freely and fully cooperate with them in every way.

§ 165.121. Record of unpaid tickets.

An itemized record of all unpaid winning mutuel tickets shall be prepared and a complete record thereof, including total, forwarded to the Commission and the Department of Revenue within 5 days after the last day of any racing meeting.

§ 165.122. Record of actual payoff.

Complete and detailed records of each race containing the actual payoff on each horse shall be filed with the Commission at the end of each day.

§ 165.123. Report of handle and attendance.

The licensee shall supply daily to the Commission, a report of the following: handle of each race, amount in each pool, Daily Double handle, total daily handle, and attendance.

§ 165.124. Test of equipment.

All licensees shall have a test, by actual operation, of the pari-mutuel equipment before the opening of each meeting, which shall be approved by a representative of this Commission and of the Department of Revenue.

§ 165.125. Personnel.

(a) A list of the personnel of the Pari-Mutuel Department shall be submitted to the Commission for its approval. Such list shall indicate the residence of each employe and also state whether he has been a citizen of the United States of America and a resident of the Commonwealth of Pennsylvania for the two years immediately prior to the commencement of his employment.

(b) A copy of the Pari-Mutuel Department payroll shall be submitted each week to the Commission and such payroll shall be accompanied by a statement sworn to by the manager of the Pari-Mutuel Department or an official of the licensee stating that at least 85% of such employes each day have been citizens of the United States of America and residents of the Commonwealth for at least 2 years immediately prior to the commencement of their employment.

Cross References

This section cited in 58 Pa. Code § 171.45 (relating to wagering requirements).

§ 165.126. Forms.

A licensee shall submit to the Commission within 24 hours after the racing of a scheduled day, a complete set of the pari-mutuel forms and data as have been used in the calculations and totals of pari-mutuel wagering.

§ 165.127. Odds board.

A licensee shall provide a sign, approved by the Commission upon which shall be displayed, the approximate straight odds on each horse in a race, the value of a \$2 winning mutuel ticket, straight, place or show on the first three horses in the race; the elapsed time of the race; the value of a \$2 winning daily double ticket; the total amount wagered on each horse and each pool and other information that the Commission may deem necessary.

**Subchapter F. ADMISSION OF HORSES TO PARI-MUTUEL
RACING PLANTS**

Sec.
165.141. Admission of horses to pari-mutuel racing plants.

§ 165.141. Admission of horses to pari-mutuel racing plants.

(a) A horse that has not been stabled at approved stabling facilities or vanned interstate may not be admitted to the premises of a pari-mutuel racing plant under the jurisdiction of the Commission unless a health certificate is presented when admission to the premises is sought. The certificate shall state the following regarding the health and physical condition of the horse:

- (1) The horse was examined thoroughly within a 7-day period preceding the date admission is sought.
- (2) The horse was free of an evidence of infectious, contagious or transmissible disease and was afebrile at the time of the examination.
- (3) The horse was free of ectoparasites at the time of the examination.
- (4) The horse has not, within the past 2 weeks, been exposed to other horses with known infectious, contagious or transmissible diseases.

(b) A horse not having the required health certificate will be unloaded in a quarantine area to be designated by the licensee. A health certificate meeting the requirements of this section shall be obtained within 24 hours from the time of admission, or the horse shall be removed from the premises. A veterinarian will be available on the premises or on call for the purposes of examining the horse and issuing the certificate. If a horse, upon examination, is found to have clinical evidence of infectious, contagious or transmissible disease, he shall be promptly recovered from the premises and the stall in which he has been stabled and the area immediately surrounding it should be sprayed with a disinfectant, as prescribed by the veterinarian of the Commission.

(c) Each corporation licensed shall be responsible for enforcing this section subject to supervision by designated officials of the Commission.

(d) A violation of this section shall subject the trainer or his designated substitute, if the designation has been made, to those penalties and other provisions of the State Horse Racing Act (15 P. S. §§ 2651—2675) (Repealed) and rules and regulations thereunder governing violations of Commission rules.

(e) A horse racing at a licensed track shall be stabled within the confines of that track unless the Commission prescribes otherwise.

Source

The provisions of this § 165.141 amended August 5, 1977, effective August 6, 1977, 7 Pa.B. 2190.

Subchapter G. TAXES AND INSURANCE

Sec.

- 165.151. State admission tax.
- 165.152. Tax on wagering.
- 165.153. Breakage.
- 165.154. Books and records.
- 165.155. Workmen's Compensation.
- 165.156. Liability insurance.

§ 165.151. State admission tax.

A corporation holding a thoroughbred horse race meeting shall collect, in addition to the admission price of tickets sold or otherwise disposed of, a tax equivalent to 15% of such admission price, or 15¢, whichever is greater. Failure to collect such tax shall result in a tax imposition thereof upon such corporation. The tax shall be paid to the Department of Revenue within ten days of collection. Before any corporation shall hold any racing meeting, it shall pay all taxes theretofore due and shall file a statement with the Department of Revenue, as well as with the Commission, containing the name of the place and stating the time when such races are to be held. A penalty of 5% and interest at the rate of 1% per month from the due date to the date of payment of the tax shall be payable whenever the tax is not paid when due.

§ 165.152. Tax on wagering.

At the close of each racing day, the corporation authorized to conduct a thoroughbred horse race meeting with pari-mutuel wagering, out of the amount retained on said day by said corporation, shall pay, through the Department of Revenue into the State Treasury for credit to the State Horse Racing Fund, a tax of 5% of the amount wagered each day.

§ 165.153. Breakage.

At the close of each racing day, the corporation shall pay, through the Department of Revenue, a tax of 50% of the total sum of odd cents retained as the result of all redistributions made on all mutuel contributions, exceeding a sum equal to the next lowest multiple of 10¢. In the event a minus pool exists in any race, the corporation licensed shall be permitted to utilize all breakage moneys accumulated during the racing day for the purpose of making payment of wagers made for that race. Under these circumstances breakage is defined as the total gross amount of odd cents retained from all pools, reduced by the amount of minus break.

§ 165.154. Books and records.

Every corporation licensed shall keep its books and records so as to clearly show by separate record the total amount of money distributed to every pari-

mutuel pool, including Daily Double pools, if any. The Commission and the Department of Revenue or their duly authorized representative shall, at all reasonable times, have access to all such books and records.

§ 165.155. Workmen's Compensation.

Every corporation licensed, owner, jockey, or trainer who employs or hires any person or persons required by the laws of the Commonwealth to be covered by Workmen's Compensation shall furnish proof satisfactory to the Commission that such corporation, owner, jockey, or trainer has adequate Workmen's Compensation Insurance in Pennsylvania. No person who employs or hires any other persons required by the laws of the Commonwealth of Pennsylvania to be covered by Workmen's Compensation shall be licensed, unless said person is carrying adequate Workmen's Compensation Insurance. Any licensee who fails to comply with such laws and with this section, shall suffer the penalties imposed by the laws and by these rules and regulations.

§ 165.156. Liability insurance.

Every corporation licensed shall obtain and maintain adequate liability insurance for the purpose of covering patrons, invitees, and other persons lawfully upon its grounds and shall file a certificate to such effect with the Commission.

Subchapter H. RULES OF PRACTICE AND PROCEDURE

GENERAL PROVISIONS

- Sec.
- 165.171. Definitions.
 - 165.172. Papers.
 - 165.173. Complaints.
 - 165.174. Suspension or revocation.
 - 165.175. Action without prior hearing.
 - 165.176. Hearing on demand of applicant or licensee.
 - 165.177. Refusal, suspension or revocation of license with prior hearing.
 - 165.178. Appearance.
 - 165.179. Service and filing of papers.
 - 165.180. Continuances.
 - 165.181. Investigation and special procedures.
 - 165.182. Witnesses and subpoenas.
 - 165.183. Commission hearings.
 - 165.184. Decisions.
 - 165.185. Appeals.
 - 165.186. Consolidation or severance.
 - 165.187. Authority of Secretary.
 - 165.188. Construction and amendment of rules.
 - 165.189. Time limit for hearings.

PROCEDURE BEFORE STEWARDS

- 165.201. General power of stewards.
- 165.202. Stewards' jurisdiction.
- 165.203. Notice required.
- 165.204. Contents of notice.
- 165.205. Testimony.
- 165.206. Hearing.
- 165.207. Presence of stewards at hearing.
- 165.208. Duty to testify.
- 165.209. Votes of stewards.
- 165.210. Records and minutes of the stewards.
- 165.211. Stewards' reference to the Commission.
- 165.212. Original record.
- 165.213. Notice of penalty.
- 165.214. Review and appeal.
- 165.215. Effective date of decisions.
- 165.216. Illegal entries.

HEARING RIGHTS

- 165.231. Hearing rights.

§ 165.171. Definitions.

(a) The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Adjudication—A final order, decree, decision, determination or ruling by the Commission affecting the rights, privileges, immunities or obligations of a licensee.

Charge—An allegation in a citation of specific illegal or unethical conduct on the part of a licensee under the provisions of a statute or the rules and regulations promulgated by the Commission.

Citation—A notice of the time and place of a hearing and a formal listing of any specific charges against a licensee.

Commission—The State Horse Racing Commission.

Complaint—A written statement of facts under oath submitted by a person which accuses the licensee of a violation of statute or of the rules and regulations promulgated by the Commission.

Information—Data indicating a violation of statute or of rules and regulations promulgated by the Commission which are collected by or presented to the Commission.

Licensee—A person holding a license issued by the Commission.

Party—The term includes the Commonwealth, the Commission, an applicant who is refused a license, a licensee whose license is suspended or revoked or a person designated in a citation as a respondent.

Person—The term includes an individual or organized group or a character including partnerships, corporations or other forms of association.

(b) As used herein, the singular shall denote the plural and the plural, the singular. Words used in one gender or tense shall include all genders and tenses.

Notes of Decisions

It was a violation of due process for the Commission to disqualify a horse and order the purse refunded without providing the petitioner with notice and opportunity for a reconsideration hearing. *Goldstein v. State Horse Racing Commission*, 557 A.2d 1183 (Pa. Cmwlth. 1989).

§ 165.172. Papers.

(a) Original papers pertaining to a proceeding instituted before or appealed to the Commission shall be permanently kept at the executive office of the Commission at Harrisburg, Pennsylvania.

(b) Access to the papers and records shall be governed by 45 P. S. §§ 1101—1611, known as the Commonwealth Documents Law.

Source

The provisions of this § 165.172 amended April 14, 1978, effective April 15, 1978, 8 Pa.B. 1112.

§ 165.173. Complaints.

(a) Complaints, appeals, affidavits, petitions, motions and other formal papers shall be filed with the Commission at its executive offices in Harrisburg, Pennsylvania.

(b) The same shall be legible and in paragraph form and shall contain all principal allegations of fact and rules or issues of law believed to be relevant. Complaints, appeals, original petitions or similar motions shall be sworn to by the applicant.

Source

The provisions of this § 165.173 amended April 14, 1978, effective April 15, 1978, 8 Pa.B. 1112.

Cross References

This section cited in 58 Pa. Code § 165.177 (relating to refusal, suspension, or revocation of license with prior hearing).

§ 165.174. Suspension or revocation.

Where a license is to be suspended or revoked, the Commission may either suspend or revoke such license without a prior hearing after which the licensee whose license has been suspended or revoked may upon timely notice demand a hearing thereon in accordance with section 20 of the Horse Racing Act (15 P. S.

§ 2670) or the Commission may conduct a hearing prior to its making a decision on the issue of suspending or revoking a license.

§ 165.175. Action without prior hearing.

(a) When an application for license is to be refused prior to issuance of a temporary license, the same may be done without prior hearing. Notice of such a decision and of the basis therefor shall be given to the applicant or applicants at his, her, or their last known address.

(b) When a temporary license is to be suspended or revoked after issuance, the same may be done without a prior hearing, provided that the holder or holders is given notice of such decision forthwith and is advised of his, her, or their privilege to demand a hearing before a State Steward within 24 hours by making such a request in writing to the State Steward at the track where the licensee has most recently been employed or has most recently run as of the time of the act complained of.

(c) When the privilege of a permanent license is to be suspended or revoked, the holder shall be notified in the same manner as provided for a temporary license in subsection (b). Such a licensee shall, however, have the privilege to request the alternative of a hearing before the Executive Secretary or a duly designated Commission Hearing Officer within no less than 48 hours following receipt of application therefor in writing filed with the Executive Secretary. Such temporary suspension or revocation may be determined by the Executive Secretary or, at the request of the applicant, by the Commission. If the applicant requests a determination by the Commission, the same may, at the election of the applicant, be based upon completion of a formal transcript of such hearing or upon an informal summary prepared by the Executive Secretary. The same may also, at the election of the applicant, be as a result of either a formal or informal Commission meeting.

(d) No permanent suspension, denial, or revocation of either a temporary or permanent license shall be ordered without granting notice of the privilege of requesting a full formal hearing under the provisions of this subchapter.

(e) All such temporary denials, suspensions, or revocations shall be within the sound reasoned discretion of the State Steward, Executive Secretary of the Commission, and the reasons and basis for any such decision shall be set forth in writing and served upon the applicant(s) in the same manner as final decisions under § 165.184(a) (relating to decisions).

(f) The initial notice of any such refusal, suspension, or revocation shall include sufficient detail as to inform an applicant with reasonable definiteness of the reasons and basis for the action taken. Such notice shall specifically advise the applicant of the appeal and review privileges set forth therein.

(g) In the event any person already holding an occupational license shall cease to actively pursue that occupation for a period in excess of 30 days, such

license may be suspended by the Stewards until the holder shall submit satisfactory evidence of a purpose to actively resume his occupation in racing.

Source

The provisions of this § 165.175 amended through November 24, 1978, effective November 25, 1978, 8 Pa.B. 3343.

Cross References

This section cited in 58 Pa. Code § 165.176 (relating to hearing on demand of applicant or licensee); and 58 Pa. Code § 165.216 (relating to illegal entries).

§ 165.176. Hearing on demand of applicant or licensee.

(a) In the event a hearing is requested under § 165.175 (relating to action without prior hearing) and the decision made does not finally dispose of all privileges claimed, a final hearing shall automatically be scheduled before the Commission.

(b) In the event no hearing is requested on temporary denial, suspension, or revocation, an affected applicant or licensee shall in any event have the privilege of requesting a final hearing before the Commission. Application therefor must be made in writing with the Executive Office of the Commission. Such notice shall set forth a concise statement of all grounds upon which a hearing is requested and shall state that a hearing is demanded not for reasons of delay but because the applicant truly believes an injustice has been done. Such application must be duly sworn to in all respects.

(c) A demand for hearing, in order to be considered timely, must be received in the office of the Commission, Harrisburg, Pennsylvania, no later than the tenth day after the application for a license has been refused or a license has been suspended or revoked. The ten days shall commence on the day that notification of such refusal, suspension, or revocation is served.

(d) The preliminary determination to refuse, suspend, or revoke a license shall remain in full force and effect pending the final determination on the hearing demanded. The Commission may, however, for cause shown and provided that sufficient facts are presented by affidavit to warrant such action, grant a *supersedeas* until the final determination of the Commission.

(e) The determination to refuse, suspend, or revoke a license shall remain in full force and effect pending the final determination of the hearing demanded. The Commission may however for cause shown and provided that sufficient facts are presented by affidavit to warrant such action, grant a *supersedeas* until the final determination of the Commission. Applications for a *supersedeas* must be made in writing, sworn to by the applicant and must set forth pertinent facts showing that the applicant will sustain irreparable harm, that there is no reasonable basis for the ruling or order complained of and showing that the applicant is likely to prevail at the ultimate hearing on the merits. Such applications must be filed in the same manner as complaints. The grant or disallowance of such appli-

cations shall be in the reasonable discretion of the Commission or of that officer to whose discretion the application is delegated.

Source

The provisions of this § 165.176 amended through October 21, 1977, effective October 22, 1977, 7 Pa.B. 3129.

§ 165.177. Refusal, suspension, or revocation of license with prior hearing.

(a) Upon receipt of a complaint filed under § 165.173 (relating to complaints), or upon any other information the Commission may deem sufficient, an order of notice of a hearing for any possible violations of the provisions of this part or of the Act may be scheduled regarding any licensee.

(b) In the case where a hearing is to be scheduled under any section of this subchapter, such order of notice of hearing shall be served upon the parties at least ten days in advance of the date of the hearing unless the Commission for cause stated shall specify a lesser period, or the respondents shall agree to a lesser period, or another section of this subchapter shall explicitly provide for a hearing upon shorter notice. The order of notice of any hearing shall recite:

(1) The time, place, and nature of the hearing.

(2) The legal authority and jurisdiction under which the hearing is to be held with specific designation of the statutory or regulatory provisions alleged to have been violated.

(3) A clear and concise factual statement sufficient to inform each party with reasonable definiteness of the type of acts or practices alleged to be in violation of the Act or regulations promulgated thereunder. In fixing the times and places for hearings, due regard shall be had for the convenience of the parties and their representatives.

Source

The provisions of this § 165.177 amended September 23, 1977, effective September 24, 1977, 7 Pa.B. 2701.

Notes of Decisions

Any hearing scheduled by the Commission after petitioner waived his right to notice, under subsection (b), by failing to request a hearing within 10 days of the date of a letter ordering him to divest his stock interest, was gratuitous and fairly conducted. *McKenna v. Horse Racing Commission*, 476 A.2d 505 (Pa. Cmwlth. 1984).

§ 165.178. Appearance.

(a) Any member of a partnership involved in any proceeding before the Commission may appear on behalf of such partnership. A corporation or association may be represented by any duly authorized agent. Proof of such authority shall be submitted to the Commission upon its request.

(b) Any party may be represented by a member in good standing of the bar of any court of record or such other representative as they may select. Such attorneys or other representative must file written appearances with the Commission.

(c) Any person appearing at any hearing shall be permitted to appear on his or her own behalf or with a representative of their choice. Each person shall be advised of the privilege of representation at the outset of any hearing. Attendance without requesting representation will be deemed a waiver of the privilege.

Source

The provisions of this § 165.178 amended April 14, 1978, effective April 15, 1978, 8 Pa.B. 1112.

§ 165.179. Service and filing of papers.

Service of process and papers shall be made as follows:

(1) *Place of service.* Upon any individual or entity currently licensed by the Commission, at the address or addresses shown upon the most recent license application; upon any party not currently licensed, at the address or addresses shown upon his or her communication or communications to the Commission or if the same is not known, at his or her last known residence or place of business; and upon any partnership herein, at a place of business if not the same be known, or if not known, at the residence of any partner not known to be a limited partner; and upon any corporation herein, at its registered office or principle place of business. All papers, pleadings, or process directed to the Commission must be served or filed at its executive offices in Harrisburg, Pennsylvania.

(2) *Manner of service.* All original orders, complaints, notices of suspension, ejection, revocation or barring, or similar orders, and all final orders, adjudications, decisions, or decrees shall be served by certified return receipt mail or by personal service. All other papers, pleadings, and process may be served by first-class mail or by personal service. Service may be made upon any adult residing at an addressee's personal residence or at his, her, or its place or business.

(3) *Proof of service.* If the fact of service be in issue, the return receipt or postal report of service of any certified letter shall be proof thereof. In all other cases, the Commission or any party may request a duly executed affidavit of service.

(4) *Substituted service.* When any party appears or has appeared by counsel or other representative, service may be made upon the same for all purposes, unless and until a formal withdrawal of service is executed and filed with the Commission.

(5) *Time of service.* All appeals, complaints, petitions, and other original process will be deemed filed when received at the Commission Executive Office in Harrisburg, Pennsylvania. All matters served by certified return receipt mail will be deemed served when initially delivered. All other matters

will be deemed served upon the date of actual receipt. All briefs and request for argument before the Commission must be received at least 10 days before the scheduled date for adjudication.

(6) *Form of papers.* All complaints, petitions, answers, requests for continuance, proofs of service, and other similar documents must be over affidavit, typed, printed or written legibly and filed in triplicate with the executive offices of the Commission.

(7) *Disputes.* Any dispute regarding any acts occurring during the start, running, or finish of any race or the order of finish or purse distribution shall be appealed to the Commission in the manner prescribed in § 165.213 (relating to notice of penalty). Any such appeal must be filed with and received by the Commission no later than 48 hours after the results of the race are declared official by the Stewards. Any disputes regarding the qualifications, entries, weights, or conditions of a race must be similarly appealed within 48 hours of the time set for closing of entries for a race as provided in § 163.481 (relating to review and appeal). Nothing herein shall be deemed to affect or limit the power or right of the Commission to initiate or conduct any later investigation or adjudicative proceeds, upon its own initiative.

Source

The provisions of this § 165.179 amended February 17, 1978, effective February 18, 1978, 8 Pa.B. 406.

§ 165.180. Continuances.

(a) All applications for continuance made prior to the hearing shall be in writing, shall set forth the reasons therefor, and shall be filed with the Commission following prior notice to all parties or their attorneys. The Commission may require the party applying for a continuance to substantiate the reasons therefor.

(b) When application is made for continuance because of the illness of a party, witness, or counsel, the Commission shall have the right to a medical certificate attesting to such illness and inability to appear.

(c) An application for continuance of any Commission must be received by the Commission in Harrisburg, Pennsylvania at least 96 hours prior to the time fixed for hearing. Applications received within the 96-hour period may be conditioned as the Commission may deem appropriate upon a satisfactory arrangement for payment of all resulting expenses. Payment of such expenses may be waived for extenuating circumstances.

(d) All continued hearings shall be promptly rescheduled.

(e) It shall be the responsibility of any party securing a continuance to immediately insure that all other parties in interest in the cause at issue are duly notified of the same and to promptly file an affidavit of such timely notice.

(f) In the event any petitioner, respondent or other moving party shall fail to appear at a hearing duly noticed, scheduled, and convened without

having secured a prior continuance in accordance with this chapter: such party may by virtue of such default have his license suspended forthwith. Upon application by the party in default and the posting of a bond or other acceptable security, the Commission will lift the suspension pending the outcome of the hearing. Should the party in default wish not to post acceptable security he may request that the Commission continue the suspension until such time as the matter is heard. Acceptable security shall be defined as a bond, cashier's check or treasurer's check, certified check, or other instrument which guarantees the availability of funds to cover security. Should the party fail to appear for the second hearing, the acceptable security shall be forfeited. The amount of the acceptable security shall be between zero and \$500, at the discretion of the Commission. If such party does appear at the second hearing, the Commission may use the security funds, in whole or in part, to reimburse itself for the expenses necessitated by this subsequent hearing—whether for the payment of witnesses, stenographer, hearing officer, or otherwise. The Commission may return the balance of the fund or the entire fund to the provider of the fund, as the Commission deems appropriate.

Authority

The provisions of this § 165.180 issued under the Race Horse Industry Reform Act (4 P. S. §§ 325.101—325.402).

Source

The provisions of this § 165.180 amended through June 18, 1982, effective June 19, 1982, 12 Pa.B. 1872. Immediately preceding text appears at serial page (60193).

§ 165.181. Investigation and special procedures.

(a) The Commission shall have the right at any time to convene and conduct such investigatory hearings as it may deem necessary and appropriate to the proper administration of the Act or of the provisions of this part. All other rules set forth herein shall apply to such hearings, provided, however, that notices of investigatory hearings need not specify which, if any, rules are believed to have been violated. Such notice shall, however, set forth the general scope of the inquiry to be conducted.

(b) The Commission shall also have the right to supersede the proceedings of any Board of Stewards under its jurisdiction at any time either upon its own motion or upon request of a Board of Stewards. Such superseding may be upon an interim or final basis and the Commission may make a partial adjudication and refer the remaining issues back to the Board of Stewards or may assume full and complete jurisdiction for all further purposes as it alone may deem appropriate and necessary.

(c) No process, requirement of a report, inspection, or other investigative act or demand shall be issued, made, or enforced in any manner or for any purpose

except as authorized by law. Every person compelled to submit data or evidence shall be entitled to retain, or procure, on payment of lawfully prescribed cost, a copy or transcript thereof.

Source

The provisions of this § 165.181 amended September 16, 1977, effective September 17, 1977, 7 Pa.B. 2651.

Cross References

This section cited in 58 Pa. Code § 163.271 (relating to claimant of horse in dispute).

§ 165.182. Witnesses and subpoenas.

(a) Witnesses shall be examined under oath or affirmation and a record of the proceeding made and kept by the Commission. If any witness or party resides outside the Commonwealth, or through illness or other cause is unable to testify before the Commission his or her testimony may be taken within or without this Commonwealth as prescribed by the Commission.

(b) Commission subpoenas shall be issued in blank over the seal of the Commission to any party, upon request. Each party shall be responsible for his or her own subpoenas and upon request, shall file a certificate of service over oath.

(c) Witness and mileage fees shall be paid by the party at whose instance the witnesses are called.

Source

The provisions of this § 165.182 amended April 14, 1978, effective April 15, 1978, 8 Pa.B. 1112.

§ 165.183. Commission hearings.

(a) The Commission may, by written order, designate one or more Commission members, or its hearing officer to take testimony and conduct hearings under this section.

(b) The functions of the Commission member, officer or agent participating in hearings shall be conducted in an impartial manner. The Commission will have the right to engage the services of law trained hearing officers whose duties and functions will be limited to presiding at hearings held in the absence of the Commission itself and to ruling upon procedural and evidentiary matters that may come before the hearings. A person presiding at a hearing may not consult a party on any fact in issue unless upon notice and opportunity for all parties to participate. A person so presiding may at any time withdraw from the proceeding if he deems himself disqualified. A person so withdrawing or who without withdrawing holds or has an interest in or has cause to believe he may have any bias or prejudice in a matter then before the Commission shall promptly file an affidavit setting forth relevant facts as to the interest, bias or prejudice before the termination of the hearing and the Commission will determine the matter as a part of the record and decision in the case. In the event of a withdrawal or disqualification,

another member, officer or agent designated by the Commission shall have the authority to complete the hearing. Only the members of the Commission will have the right to make decisions on those matters referred to them.

(c) Officers presiding at hearings shall have authority to administer oaths and affirmations, issue subpoenas authorized by law, rule upon offers of proof or issues of procedure and otherwise regulate the course of hearings.

(d) A decision shall be made and an adjudication issued thereon solely on the basis of evidence introduced at the hearing.

(e) Proponents of any issue shall have the burden of proof thereof.

(f) Technical rules of evidence may not apply in hearings held under this part. A relevant evidence may be received in either oral or documentary form, provided, that the Commission or a hearing officer acting hereunder may exclude irrelevant, immaterial or repetitious evidence. Tape recordings of stewards' and hearing officers' hearings as well as of investigative hearings or depositions may be received in evidence. Investigative reports of Commission security personnel or of authorized agents of the Thoroughbred Racing Protective Bureau shall be deemed to be a part of the official records of the Commission in a relevant proceeding and an affected party shall have the right to examine the same insofar as they may pertain to matters directly and immediately in issue. Sanctions or orders may not be entered unless based upon substantial, reliable and probative evidence. Parties shall be entitled to cross-examine and to present rebuttal evidence as may be necessary to a full and fair hearing.

(g) At any time after the service of process a party may serve upon another party a written request for the admission of the genuineness of relevant documents. Copies of the subject documents shall accompany the request. Each requested admission shall be deemed made unless within 10 days after service thereof, the party so served serves upon the party making the request and the Commission either a statement setting forth the specific reasons why the admission cannot be made or written objections on the ground of privilege, irrelevancy or that the request is otherwise improper in whole or in part.

(h) The order of testimony will be at the discretion of the hearing officer. In determining this order, he shall take into consideration the right of each party to present his case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts, and the desirability of hearing witnesses at times convenient for them. If it appears necessary or appropriate hearings may be continued generally or to a day certain.

(i) The hearing officer or the Commission may request a party to notify the Executive Secretary of the Commission in advance of the hearing of his intention to appear, and the approximate time testimony or argument will consume. The presiding officer may call any person he or she wishes to hear and may issue subpoenas to insure attendance.

(j) [Reserved].

(k) Bills of particulars may be requested in any matter and shall be allowed by the Commission in its discretion.

(l) If, at the time and place scheduled for hearing, parties who have received due notice are not in attendance whether in person or by counsel, the matter may be heard *ex parte* or by and upon default.

(m) A party to a proceeding may waive in writing the right to a hearing. A waiver shall constitute an admission of charges contained in the ruling appealed from or notice or notices of hearings prepared by the Commission and be deemed an authorization that the Commission may enter a final order or adjudication without necessity of receipt of further evidence. A waiver by a corporate licensee or unincorporated association shall be accompanied by a resolution under seal authorizing the submission of the waiver. The waivers shall be in a form prescribed by the Commission.

(n) Contemptuous conduct shall be grounds for exclusion from a hearing. If the hearing officer should deem the same to be occurring he shall so note on the record and shall see that a stenographic report is made of the same. Should he or the Commission deem any further sanction appropriate for the same, the further sanction can be imposed only following notice and a hearing, following completion of the original record of the incident in question.

(o) Motion and objections made during a hearing shall be stated orally and shall be included in the stenographic record of the hearing. Argument may not be included in the stenographic record unless a participant, shall so request.

(p) At the conclusion of the hearing, parties shall be afforded an opportunity to submit briefs and requests for findings of fact and conclusions of law. Copies of a brief or requests submitted shall be served upon the parties and formal proof of the service filed with the Commission. A party may request oral argument before the Commission as a matter of right. The Commission or an agent thereof may request the same which shall be scheduled upon due notice of the parties.

(q) A petition for rehearing, reconsideration or modification of a Commission order or adjudication shall be in writing setting forth in numbered paragraphs the findings or orders of the Commission that may be involved, the points relied upon by the petitioner, appropriate record references and specific request for the changes or modifications desired. If further evidence or testimony is desired or contemplated, the nature and purpose of the same must be briefly stated.

(r) The Commission may, at any time, in its discretion, and upon its own motion reopen a hearing upon due notice to the parties.

(s) A record of the testimony and exhibits, together with the papers and requests filed in the proceedings, and relevant official records shall constitute the record. In the event a party desires a written transcript, it shall be available at rates not to exceed the maximum rates fixed by contract between the Commission and the reporter. The copy of the Commission shall be open to inspection without charge by an interested party. Partial transcripts or transcripts of uncompleted hearings will not be furnished except to a party to the proceeding.

Source

The provisions of this § 165.183 amended through April 14, 1978, effective April 15, 1978, 8 Pa.B. 1112.

Notes of Decisions

The Commission did not violate its procedural regulations by making a site inspection after the public hearing in that a hearing is not the sole means by which the Commission may gather information. *Upper Merion Township v. Horse Racing Commission*, 602 A.2d 459 (Pa. Cmwlth. 1992).

Cross References

This section cited in 58 Pa. Code § 165.184 (relating to decisions); and 58 Pa. Code § 165.231 (relating to hearing rights).

§ 165.184. Decisions.

(a) Within 30 days after the conclusion of the hearing, the Commission shall issue a written order. The Commission may also, in its discretion, render a written adjudication including a statement of findings of fact and conclusions of law, with the reasons or basis therefor, upon the material issues of fact, law or discretion presented on the record. Orders and adjudications shall be based upon a consideration of the whole record and be supported by reliable, probative and substantial evidence. A final order or adjudication shall be signed and approved by two members of the Commission who shall have the right to enter the final order or adjudication based upon the record made at the hearing or hearings conducted by the Commission or its designated hearing officer, under § 165.183 (relating to Commission hearings). Minority opinions may be submitted and these shall become part of the record.

(b) Orders and adjudications shall be served upon the parties or their counsel personally or by certified mail. If service is made by mail, the date of mailing will be the date of service.

Notes of Decisions

Failure by the Commission to comply with this section's requirements, including that the order of adjudication be in writing, rendered the Commission's Order on reconsideration invalid since it violated its own regulations. *Goldstein v. Horse Racing Commission*, 557 A.2d 1183 (Pa. Cmwlth. 1989).

Cross References

This section cited in 58 Pa. Code § 165.175 (relating to action without prior hearing).

§ 165.185. Appeals.

(a) Within 30 days after the entry of an adjudication or another final order or decision of the Commission, a party shall have the right to appeal therefrom to the Commonwealth Court under 42 Pa.C.S. § 763 (relating to direct appeals from government agencies).

(b) Parties interested jointly, severally or otherwise in the same adjudication may join in an appeal therefrom even though the interested parties do not join therein.

Source

The provisions of this § 165.185 amended March 30, 1979, effective March 31, 1979, 9 Pa.B. 1130.

§ 165.186. Consolidation or severance.

Any two or more proceedings may be consolidated or severed by the Commission in its discretion.

§ 165.187. Authority of Secretary.

(a) The Executive Secretary of the Commission shall have authority to enter and issue the orders of the Commission and to certify copies of papers and documents which are part of the files or records of the Commission.

(b) The Executive Secretary of the Commission shall be responsible for the efficient and orderly discharge of administrative matters including the keeping of Commission journals and the minutes of Commission meetings and the keeping of the docket and files of the Commission, and shall be permitted to attend the hearing, meetings and deliberations of the Commission.

Source

The provisions of this § 165.187 amended March 11, 1977, effective March 12, 1977, 7 Pa.B. 705.

§ 165.188. Construction and amendment of rules.

(a) This part is intended to aid the efficient operation of the Commission and the orderly administration of the law. This part shall be informally and liberally construed for the accomplishment of these purposes and may be waived or suspended by the Commission following prior notice and in a proceeding unless the action results in depriving a party of substantial rights.

(b) This chapter may be amended or rescinded by the Commission in accordance with law.

Source

The provisions of this § 165.188 amended April 14, 1978, effective April 15, 1978, 8 Pa.B. 1112.

§ 165.189. Time limit for hearings.

In the event of failure of a party to proceed in or faithfully prosecute a matter pending before the Commission for a period in excess of 4 months, which has not been continued, the same may be dismissed with prejudice for reason of the default or neglect at the discretion of the Commission on its own motion or upon the motion of another affected party.

Source

The provisions of this § 165.189 amended November 24, 1978, effective November 25, 1978, 8 Pa.B. 3344.

Notes of Decisions

The Commission may dismiss cases pending more than 4 months before the Commission, in its discretion, due to fault or neglect, that have neither been duly continued nor prosecuted. *Worthington v. Horse Racing Commission*, 514 A.2d 311 (Pa. Cmwlth. 1986).

PROCEDURE BEFORE STEWARDS**§ 165.201. General power of stewards.**

The Stewards shall have the power to resolve matters before them including those which are not expressly covered by this chapter. In all cases, the Stewards shall render an opinion in accordance with the generally accepted customs and usages of racing in conformity with equitable standards of justice.

Notes of Decisions

An apprentice jockey who had his license suspended for use of illegal drugs without a hearing did not have his due process rights violated because he was given notice and an opportunity to challenge the suspension in a hearing before the Stewards, with the opportunity to be represented by counsel who cross-examined witnesses against him. *Luzzi v. Horse Racing Commission*, 548 A.2d 659 (Pa. Cmwlth. 1988).

Cross References

This section cited in 58 Pa. Code § 165.204 (relating to contents of notice); and 58 Pa. Code § 165.216 (relating to illegal entries).

§ 165.202. Stewards' jurisdiction.

The Stewards' jurisdiction and powers shall extend for 30 days after the conclusion of a race meeting with respect to anything occurring thereat and shall commence at the time when entries are taken for the first day of racing thereat. A matter coming before the Stewards shall be decided within 14 days of the first formal action taken thereon, unless continued by agreement of the Stewards. No matter may be continued for more than an additional 14 days without the expressed permission of the Commission. Stewards' reports and final orders and rulings shall be made within the time limits.

Notes of Decisions

An apprentice jockey who had his license suspended for use of illegal drugs without a hearing did not have his due process rights violated because he was given notice and an opportunity to challenge the suspension in a hearing before the Stewards, with the opportunity to be represented by counsel who cross-examined witnesses against him. *Luzzi v. Horse Racing Commission*, 548 A.2d 659 (Pa. Cmwlth. 1988).

Cross References

This section cited in 58 Pa. Code § 165.216 (relating to illegal entries).

§ 165.203. Notice required.

Before holding the hearing provided for under this chapter notice in writing shall be given to the party to be charged with a violation. A party may waive advance notice of a Stewards' hearing by executing a written waiver at the start of the hearing.

Cross References

This section cited in 58 Pa. Code § 165.216 (relating to illegal entries).

§ 165.204. Contents of notice.

The notice required by § 165.201 (relating to general power of stewards) shall:

- (1) Informally and generally describe the nature of the infraction or violation charged.
- (2) State the time and place of hearing.
- (3) Notify the party of his right to have counsel or an observer of his choice and that he bears the sole responsibility for securing and insuring the presence of the same.
- (4) Provide for the right to waive transcription of testimony at the hearing.

Notes of Decisions

An apprentice jockey who had his license suspended for use of illegal drugs without a hearing did not have his due process rights violated because he was given notice and an opportunity to challenge the suspension in a hearing before the Stewards, with the opportunity to be represented by counsel who cross-examined witnesses against him. *Luzzi v. Horse Racing Commission*, 548 A.2d 659 (Pa. Cmwlth. 1988).

Cross References

This section cited in 58 Pa. Code § 165.216 (relating to illegal entries).

§ 165.205. Testimony.

Testimony at a hearing shall be given under affirmation or oath and a record shall be made of the hearing, either by use of a tape recorder or by the transcript of the court reporter. The party charged with a violation may, however, waive the recording and transcribing of the testimony. The Stewards may not be required to receive testimony under oath in cases where their ruling is based solely upon a review of the video tapes of a race. A party may request a viewing of the film in the presence of the Stewards at the hearing and be given an opportunity to state his own interpretation of the same.

Notes of Decisions

An apprentice jockey who had his license suspended for use of illegal drugs without a hearing did not have his due process rights violated because he was given notice and an opportunity to challenge the suspension in a hearing before the Stewards, with the opportunity to be represented by counsel who cross-examined witnesses against him. *Luzzi v. Horse Racing Commission*, 548 A.2d 659 (Pa. Cmwlth. 1988).

Cross References

This section cited in 58 Pa. Code § 165.216 (relating to illegal entries).

§ 165.206. Hearing.

No final determination may be made by the Stewards until the hearing is completed and the evidence has been received and the party charged has been given the opportunity to hear the evidence presented against him. If a summoned or noticed party fails to appear, an order or ruling may be made against him by default.

Notes of Decisions

An apprentice jockey who had his license suspended for use of illegal drugs without a hearing did not have his due process rights violated because he was given notice and an opportunity to challenge the suspension in a hearing before the Stewards, with the opportunity to be represented by counsel who cross-examined witnesses against him. *Luzzi v. Horse Racing Commission*, 548 A.2d 659 (Pa. Cmwlth. 1988).

Cross References

This section cited in 58 Pa. Code § 165.216 (relating to illegal entries).

§ 165.207. Presence of stewards at hearing.

At least the State Steward and one Association Steward shall be present throughout a Stewards' hearing.

Cross References

This section cited in 58 Pa. Code § 165.216 (relating to illegal entries).

§ 165.208. Duty to testify.

It shall be the duty of all persons to make full and complete disclosure at a Stewards' hearing of a fact or knowledge they may possess of violation or possible violation of a rule or regulation of racing of the Commission or of law and no person may refuse to testify before Stewards on a relevant matter except upon proper exercise of a legal privilege nor may a person testify falsely or incompletely to the Stewards.

Source

The provisions of this § 165.208 amended December 8, 1978, effective December 9, 1978, 8 Pa.B. 3494.

Cross References

This section cited in 58 Pa. Code § 165.216 (relating to illegal entries).

§ 165.209. Votes of stewards.

The Stewards shall decide all matters coming before them by majority vote. Should a Steward vote in the minority, he shall immediately make full report thereof to the Commission. A Steward so voting shall have the right to file a separate opinion thereof to the Commission.

Cross References

This section cited in 58 Pa. Code § 165.216 (relating to illegal entries).

§ 165.210. Records and minutes of the stewards.

The State Steward shall be responsible for insuring that a complete set of minutes, records and orders and rulings by the Board of Stewards is maintained, including a record of votes taken, orders and rulings entered and fines imposed. A written report concerning formal orders and rulings shall be kept by the Stewards and copies of the same periodically transmitted to the Commission.

Cross References

This section cited in 58 Pa. Code § 165.216 (relating to illegal entries).

§ 165.211. Stewards' reference to the Commission.

The Stewards shall have the power to refer a matter within their jurisdiction or powers directly to the Commission either before or after holding a hearing thereon. The Stewards may refer a matter for initial hearing to the Commission whenever it is deemed by them to be impossible or impracticable to hold initial Stewards' hearings, or because of the ending of a meet or for other good and substantial reason. A penalty or ruling made by the Stewards may be expressly conditioned by them on their own motion upon review and action by the Commission. If the penalty the Stewards imposed under this chapter appears insufficient to them, they shall immediately report the same to the Commission for further action.

Notes of Decisions

An apprentice jockey who had his license suspended for use of illegal drugs without a hearing did not have his due process rights violated because he was given notice and an opportunity to challenge the suspension in a hearing before the Stewards, with the opportunity to be represented by counsel who cross-examined witnesses against him. *Luzzi v. Horse Racing Commission*, 548 A.2d 659 (Pa. Cmwlth. 1988).

Cross References

This section cited in 58 Pa. Code § 165.216 (relating to illegal entries).

§ 165.212. Original record.

The original record of the hearing and the report of the Stewards shall be delivered by them to the Commission concurrently with notice of an order, ruling or determination made to the party charged and heard. If notice of the penalty, order, ruling or determination has been given orally by a Steward to the party charged, as well as by writing, the record shall contain a statement that the oral notice was given and the date, time and place when it was given. The record shall also state the date and manner that written notice thereof was given.

Notes of Decisions

An apprentice jockey who had his license suspended for use of illegal drugs without a hearing did not have his due process rights violated because he was given notice and an opportunity to challenge the suspension in a hearing before the Stewards, with the opportunity to be represented by counsel who cross-examined witnesses against him. *Luzzi v. Horse Racing Commission*, 548 A.2d 659 (Pa. Cmwlth. 1988).

Cross References

This section cited in 58 Pa. Code § 165.216 (relating to illegal entries).

§ 165.213. Notice of penalty.

In cases involving a penalty, fine, suspension or sanction of any nature, notice of the same shall be given in writing to an adversely affected party. A penalty, fine, suspension or other sanction shall be deemed to have been imposed from the time that notice thereof is given. Notice shall be deemed given as of the time made if the same be made orally and as of the time it is issued for delivery if given in writing. Where notice is given orally, it shall be given by a Steward and shall immediately be followed by written notice. Notice shall be issued within no less than 48 hours of the final Stewards' ruling, order or determination.

Cross References

This section cited in 58 Pa. Code § 163.481 (relating to review and appeal); 58 Pa. Code § 165.179 (relating to service and filing of papers); and 58 Pa. Code § 165.216 (relating to illegal entries).

§ 165.214. Review and appeal.

The Commission may investigate and review a decision of the stewards on its own motion or on the request of an aggrieved party. The appeal from the decision of stewards shall be made in writing within 10 days following the receipt of oral notice or the issuance of written notice of the decision, whichever occurs first. The appeal shall be sworn to before a notary public or one of the stewards unless taken by the Commission and shall set forth all matters complained of with particularity. The written notice of appeal shall be received by the Commission within the 10-day period. An appeal not so filed will be deemed untimely and

matters that could have been reviewed by the Commission shall be deemed agreed to by the parties and errors waived.

Source

The provisions of this § 165.214 adopted December 8, 1978, effective December 9, 1978, 8 Pa.B. 3494.

Notes of Decisions

There is no time requirement as to when the Commission must hold a hearing on an appeal of the suspension of a jockey's license. *Luzzi v. Horse Racing Commission*, 548 A.2d 659 (Pa. Cmwlth. 1988).

An apprentice jockey who had his license suspended for use of illegal drugs without a hearing did not have his due process rights violated because he was given notice and an opportunity to challenge the suspension in a hearing before the Stewards, with the opportunity to be represented by counsel who cross-examined witnesses against him. *Luzzi v. Horse Racing Commission*, 548 A.2d 659 (Pa. Cmwlth. 1988).

Cross References

This section cited in 58 Pa. Code § 165.216 (relating to illegal entries).

§ 165.215. Effective date of decisions.

A decision rendered by the stewards shall only become effective 5 days after the ruling is served personally on the affected party or 5 days after the ruling has been sent by certified mail to the address given by the affected party in his license application unless the stewards shall find the delay to be contrary to the public interest. An affected party shall have the right to waive the delay in the effective date of a stewards' ruling and may, by writing, consent to immediate effectuation of a sanction or order.

Source

The provisions of this § 165.215 adopted November 24, 1978, effective November 25, 1978, 8 Pa.B. 3346.

Notes of Decisions

An apprentice jockey who had his license suspended for use of illegal drugs without a hearing did not have his due process rights violated because he was given notice and an opportunity to challenge the suspension in a hearing before the Stewards, with the opportunity to be represented by counsel who cross-examined witnesses against him. *Luzzi v. Horse Racing Commission*, 548 A.2d 659 (Pa. Cmwlth. 1988).

Cross References

This section cited in 58 Pa. Code § 165.216 (relating to illegal entries).

§ 165.216. Illegal entries.

If a licensee shall deliver a horse to an enclosure without a health or Coggin's certificate, enter an untattooed horse, enter a horse whose owner or trainer is not licensed, enter a horse without a satisfactory foal certificate, enter a horse owned or controlled by an ineligible party, enter an ineligible horse, deliver a horse late to the paddock, fail to run an entered horse, file an incomplete or incorrect license application, fail to pay or see to payment of a required licensing fee, fail to file required medication or medication administration report forms, fail to pay a required entry or stake fee, fail to timely complete a phase of the licensing procedure, fail to make a complete or timely scratch of a horse not run, fail to file and maintain current up-to-date records of the ownership, sale, or transfer, or registration of ownership of a horse, enter a horse not properly registered with the Jockey Club following allowance of the time for correction of record allowed in § 163.102 (relating to certification of registration and identification), or violate a house rule approved by the Commission pertaining to smoking, fire, safety or parking violations, the stewards or the Commission may enter a fine only prior to the holding of a hearing upon receipt of credible evidence indicating the act. A fine to be imposed prior to a hearing may not exceed \$100. In the event of the action, the licensee affected shall be promptly notified in writing by the stewards, or the Commission, of the entry of the fine and of his right to request a hearing under this section and §§ 165.201—165.215 (relating to procedure before stewards) in the event of a fine imposed by the stewards and § 165.175 (relating to action without prior hearing) in the event of a fine imposed by the Commission. If the licensee desires to appeal a fine, he shall, on timely compliance with this chapter, be entitled to a hearing de novo. If the request is made, payment of the fine or fines in issue shall be stayed pending the outcome of the hearing. In the absence of a request for hearing under either § 165.175 or §§ 165.201—165.216 at the expiration of the time allowed for a hearing fines as initially proposed will become final and binding for purposes.

Source

The provisions of this § 165.216 adopted November 24, 1978, effective November 25, 1978, 8 Pa.B. 3345.

Notes of Decisions

An apprentice jockey who had his license suspended for use of illegal drugs without a hearing did not have his due process rights violated because he was given notice and an opportunity to challenge the suspension in a hearing before the Stewards, with the opportunity to be represented by counsel who cross-examined witnesses against him. *Luzzi v. State Horse Racing Commission*, 548 A.2d 659 (Pa. Cmwlth. 1988).

Cross References

This section cited in 58 Pa. Code § 165.216 (relating to illegal entries).

165-67

(239931) No. 280 Mar. 98

HEARING RIGHTS**§ 165.231. Hearing rights.**

(a) The Commission or an association licensed by the Commission shall have the right and obligation to deny access to or to eject from facilities of a track a patron or licensee whose presence or conduct is deemed detrimental to the best interests of racing or to the orderly conduct of a racing meet.

(b) At the time of or immediately following ejection of or denial of access to a licensee, the association or Commission agents acting therein shall advise the licensee in writing of his right to demand a hearing by mailed service of the form of notice as shall from time to time be prepared and supplied by the Commission. The form of notice shall be in a form prepared by the Commission and shall be mailed to the most current licensed address of the ejectee by certified return receipt mail.

(c) The notice shall advise the ejectee that he shall have a right to demand a hearing upon the ejection if written demand for the same is served upon the association in question and is received by the executive offices of the Commission no later than 48 hours following receipt by the ejectee of the notice confirming ejection. If an ejectee shall timely file a demand for a hearing, the hearing shall be scheduled within 48 hours of the time of receipt of the demand or as soon thereafter as possible. The hearing shall be at the executive offices of the Commission. Notice of the date and time of the hearing shall be forwarded to the most current licensed address of the ejectee and to the executive office of the association.

(d) The hearing shall be scheduled and conducted before a hearing officer to be designated by the Commission. The hearings shall be held in an informal manner and shall be mechanically recorded by the hearing officer. The hearing officer shall immediately upon conclusion of the hearing prepare a detailed summary of the hearing for review by the Commission. The rules of evidence as described in § 165.183(f) (relating to Commission hearings) shall apply to the hearings.

(e) Persons attending or participating in hearings shall comply with the following:

(1) Persons attending or participating in the hearing shall be obligated to and shall cooperate fully with the hearing officer and shall answer relevant questions and supply relevant information that may be requested. A person shall have the privilege of being represented by counsel of his choice and shall bear the sole responsibility for insuring and seeing to the presence and availability of the same at the time and place scheduled for the hearing. The person shall have the right to examine and cross-examine witnesses and to see written matters that are introduced into the record or used in evidence in the course of a hearing. Matters so used shall become a permanent part of the hearing file.

(2) If the ejectee waives receipt of a completed transcript of the hearing, the Commission will render a final summary report and decision no less than

48 hours following the conclusion of the hearing. If the ejectee, the Commission, or a directly interested party requests a completed transcript prior to decision, a final decision shall then be rendered 48 hours following the receipt of the transcript.

(f) The Commission may eject a patron from the enclosure at any time. The patron, however, shall be permitted a hearing regarding the ejection. However, the scope of the hearing shall be limited to the question of whether the ejection was arbitrary or capricious, in accordance with section 12.1 of the act (15 P. S. § 2662.1(a)) (Repealed).

(g) A complete copy of the ruling shall thereupon be served in the same manner as notice of the hearing.

(h) Other provisions of the provisions of this part pertinent to hearing not inconsistent herewith shall otherwise be applicable.

Source

The provisions of this § 165.231 amended through January 23, 1981, effective January 10, 1981, 11 Pa. B. 420. Immediately preceding text appears at serial pages (51778) and (51779).

Notes of Decisions

The Commission need not hold a hearing within 48 hours but rather schedule a hearing as soon as possible. *Luzzi v. Horse Racing Commission*, 548 A.2d 659 (Pa. Cmwlth. 1988).

[Next page is 167-1.]

165-70

(239934) No. 280 Mar. 98

Copyright © 1998 Commonwealth of Pennsylvania