

Chapter Game 3

APPEALS, HEARINGS AND ENFORCEMENT PROCEEDING

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Note: Chapter RACE 3 was renumbered chapter WGC 3 and corrections made under s. 13.93 (2m) (b) 1. and 6., Stats., Register, March, 1995, No. 471. Chapter WGC 3 was renumbered chapter Game 3 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, November, 1999, No. 527, eff. 12-1-99.

Game 3.01 Purpose. These rules shall apply to all hearings conducted by the department pursuant to ch. 227, 562 or 563, Stats., or Indian gaming compacts entered into pursuant to s. 14.035, Stats.

History: Cr. Register, March, 1990, No. 411, eff. 4-1-90; am. (intro.), r. (1) to (4), Register, November, 1999, No. 527, eff. 12-1-99.

Game 3.02 Computation of time. The computation of time in computing any period of time prescribed in this chapter, including acts of default, shall be governed by s. 990.001 (4), Stats. Papers received by the division for filing after 4:30 p.m. shall be considered as filed the following day.

History: Cr. Register, March, 1990, No. 411, eff. 4-1-90; am. Register, November, 1999, No. 527, eff. 12-1-99.

Game 3.03 Request for hearing. (1) All requests for hearings:

- (a) Shall be in writing;
- (b) Shall contain an address and telephone number where the person requesting the hearing may receive service of documents relative to the hearing; and
- (c) Shall set forth the reasons which support the request for hearing. The documents should take the form of a pleading in a civil case, where practicable.

(2) (a) Requests for hearing from orders of the stewards suspending an occupation licensee, recommending denial or revocation of an occupation licensee, imposing a forfeiture on an occupation license or from orders of the stewards excluding an occupation licensee shall be instituted by filing a written request for a hearing no later than 7 days after notice of the suspension, forfeiture or exclusion has been communicated to the licensee. A request for hearing shall not stay enforcement of the decision of the stewards. If the party requesting the appeal desires that the administrator stay the decision of the stewards, the party shall specify in the request for stay the reasons supporting the issuance of the stay. The administrator shall decide whether to grant the stay within 48 hours of receipt of the request.

(b) The chief steward shall compile and review a copy of the transcript related to the stewards inquiry and other written materials on file with the division regarding the matter being appealed. The chief steward shall prepare a report of the chief steward's review and file it with the administrator within 7 days of the division's receipt of a request under this section.

(3) All other requests for hearing shall be instituted by filing a written request for hearing no later than 30 days after receipt of notice of the action of the department which gives rise to the right to a hearing.

(4) Requests for hearing may be filed in person or by certified mail to the division's administrative office at 2005 W. Beltline Hwy., Suite 201, P. O. Box 8979, Madison, WI, 53708-8979. Re-

quests submitted by certified mail shall be deemed timely if they are postmarked within the applicable time frame for filing an appeal.

(5) Any party appealing an action affecting the distribution of a purse shall serve all other owners of an animal in the race, as identified in the official program, with a copy of the request for hearing. A copy of such notices shall be filed with the request for hearing.

History: Cr. Register, March, 1990, No. 411, eff. 4-1-90; am. (1) (b), (c) and (2) to (4), Register, November, 1999, No. 527, eff. 12-1-99; CR 03-070: renum. (2) to be (2) (a), cr. (2) (b) Register November 2003 No. 575, eff. 12-1-03.

Game 3.04 Determination of parties and appearances. (1) PARTIES. (a) The division, any person requesting a hearing pursuant to s. Game 3.03, and any person against whom a proceeding is initiated by the division shall be considered parties to the hearing for purposes of s. 227.53, Stats.

(b) Any other person may petition the department to be admitted as a party to the hearing. The department shall grant such a motion upon a determination that the movant has substantial interests to which the order of the department in the contested case will apply and affect.

(2) APPEARANCES. (a) A person who files a request for hearing need not be represented by an attorney.

(b) Except as provided in pars. (c) and (d) no one may appear before the department in a representative capacity except those licensed to practice law in Wisconsin or any other state.

(c) A partnership may be represented by any partner on behalf of the partnership.

(d) A corporation may be represented by an officer or director of the corporation.

(3) SERVICE. (a) Service of all documents and exhibits filed in connection with a hearing to be made part of the record shall be served on all parties as provided in s. 801.11, Stats., or by certified mail to last known address of the party or their attorney.

(b) No documents or exhibits shall be accepted or considered by the hearing officer or department unless they are admitted into evidence and served on all parties.

History: Cr. Register, March, 1990, No. 411, eff. 4-1-90; correction in (1) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 1995, No. 471; am. (1) (a), (b), (2) (b) and (3) (b), Register, November, 1999, No. 527, eff. 12-1-99.

Game 3.05 Conduct of hearings. Hearings shall be conducted in conformance with this chapter and, as to all aspects not specified in this chapter, or in conflict with ch. 227, Stats., in conformance with ch. 227, Stats.;

(1) SELECTION OF HEARING OFFICER. The division shall request the appointment of a hearing officer within 45 days after receipt of a request under s. Game 3.03. The hearing officer shall be appointed pursuant to s. 227.43 or 227.46 (1), Stats. The hearing officer shall have all the powers and duties enumerated in ch. 227, Stats. In addition, a hearing officer appointed pursuant to this section may:

- (a) Upon objection to the admissibility of evidence, receive

the disputed evidence subject to a subsequent ruling by the department;

(b) Exclude evidence upon the hearing officer's motion or motion of either party, but a party offering evidence that is ruled inadmissible shall be permitted to make a brief offer of proof with such ruling being subject to subsequent ratification by the department. Unless expressly overruled, such decision by the hearing officer shall be deemed ratified.

(2) OFFICIAL NOTICE. The department and hearing officer may take official notice of:

(a) The customs and usages of racing upon which pari-mutuel wagering is conducted; and

(b) Matters within its specialized knowledge and expertise.

History: Cr. Register, March, 1990, No. 411, eff. 4-1-90; am. (intro.) and (1) (a), r. (1) (a) 1., (c), (2) (a) to (c) and (3) (a) to (c), renum. (1) (a) 2. and 3. to be (1) (a) 1. and 2. and (1) (b) to be (2) and am. Register, November, 1999, No. 527, eff. 12-1-99; CR 03-070: am. (1) (intro.) Register November 2003 No. 575, eff. 12-1-03.

Game 3.06 Decisions. (1) PROPOSED DECISIONS. (a) In all cases in which a proposed decision is required by s. 227.46 (2), Stats., the hearing officer shall within 7 working days of the close of the presentation of evidence and arguments by the parties, prepare and submit to the department a proposed decision

meeting the requirements of s. 227.46 (2), Stats. Within 24 hours of receipt of the decision the department shall serve on all parties a copy of the proposed decision. Each party adversely affected by the proposed decision shall, within 7 working days of receipt of the proposed decision, file any objections to the proposed decision in writing.

(b) In all other cases, unless otherwise directed by the administrator pursuant to written order upon appointment of a hearing officer, the department shall base its decision on the record certified to it by the hearing officer without a proposed decision as set forth in s. 227.46 (3) (b), Stats., subject to any rulings on motions or objections.

(2) FINAL DECISION. The department shall review the record in its entirety before rendering a decision.

(3) CONTESTED DECISION. If a court of competent jurisdiction or any administrative hearing examiner holds any part of a decision to issue a license by the division pursuant to s. 562.05 (1) (a), (b), (c), (d) or (e), Stats., invalid or otherwise unenforceable, such holding shall not affect the validity of the remainder of the decision, unless this result is directed in the order of the court.

History: Cr. Register, March, 1990, No. 411, eff. 4-1-90; am. Register, November, 1999, No. 527, eff. 12-1-99; CR 03-070: cr. (3) Register November 2003 No. 575, eff. 12-1-03.