

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

61D-3.002 Appeal Hearing Procedures.

(1) The stewards ~~and division judge~~, ~~judges, or panel of judges~~ shall include in their decision a notice to the licensee of the licensee's right to an appeal ~~hearing~~ before the division director or his/her designee. In addition, the stewards ~~and division judge~~, ~~judges, or panel of judges~~ shall provide the licensee with the procedures and time limits for invoking the right to an appeal. All requests for an appeal hearing must be submitted in writing or on Form DBPR PMW-3100, Request for Appeal of Stewards'/Judges' Ruling, adopted and incorporated by Rule 61D-10.001, Florida Administrative Code. The appeal shall state in writing the reason the licensee believes the judge's or stewards' order should be reversed. ~~The request for hearing must provide the reason for the request and be signed by the requesting party. The requesting party, however, is not barred from raising issues on appeal not included on Form DBPR PMW 3100.~~

(2) Failure of the licensee to file a request for an appeal hearing within 10 days of the decision of the stewards ~~or division judge~~, ~~judges, or panel of judges~~ constitutes a waiver of the right to an appeal hearing. ~~The request for an appeal shall state in writing the reason the licensee believes the judges' or stewards' order should be reversed.~~

(3) Upon receipt of an appeal, the division shall review the appeal and the record to determine whether a legitimate issue of law has been presented that would require an appeal hearing to be scheduled. The division shall not substitute its judgement for the judgement of the stewards or division judge as to a finding of fact or the weight and credibility of evidence in the record. The division shall issue an order affirming the stewards or division judge if an appeal that merely disputes findings of fact based upon evidence received by the stewards or division judge. Appeal hearings may be conducted either in person, ~~or telephonically,~~ or other electronic means.

(4) ~~In the event the stewards, judges, or panel of judges make a determination that there is a reasonable suspicion to believe that a violation of Section 550.2415, Florida Statutes, has occurred, or in the event of a positive test for a substance prohibited under Section 550.2415, Florida Statutes, any purse money in question which has not been disbursed shall be placed on account with the permitholder's comptroller. In the event that any purse money has been distributed, all individuals to whom the purse money has been directly distributed shall place monies equal to the amount received from the purse in a segregated interest bearing account in a recognized financial institution, and shall notify the division of the location of the account. The monies shall remain in the account until final disposition of the case, at which time control of the monies shall be returned to the original individuals; or if a violation is proved, the monies shall be transmitted to the permitholder for redistribution.~~

~~(5) Failure to appear for an appeal hearing scheduled and noticed shall constitute a waiver of the right to such a hearing.~~

~~(6) Nothing in this rule shall divest the division of its authority to initiate action for alleged violations of Chapter 550, Florida Statutes.~~ If the division determines that the stewards or the division judge judges have exceeded their jurisdiction or departed from the essential requirements of law, it shall void their decision and either enter a decision for the licensee or shall prosecute the alleged violation itself with the respondent receiving rights to an administrative hearing pursuant to Section 120.57, Florida Statutes.

(5) No appeal shall be filed solely for the purpose of delaying imposition of a penalty through a stay pending appeal pursuant to Rule 61D-3.003, F.A.C. If the division finds that an appeal was sought for the purpose of delay, it shall remand the appeal to the stewards or division judge to determine whether additional penalties should be imposed.

~~(6) (7) Upon conclusion of the appeal hearing, the division director may affirm or reverse the decision of~~ remand the matter to the stewards/division judge judges with directions for an appropriate disposition of the case under the pari-mutuel statutes or rules.

Specific Authority 120.80(4)(a), 550.0251, 550.054(9)(b), 550.1155 FS. Law Implemented 120.80(4)(a), 550.0251, 550.054, 550.1155 FS. History—New 10-20-96, Amended 1-5-98, 4-12-06.