

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

61D-3.003 Stay of Stewards'/Judge's Judges' Penalty.

(1) A request for an appeal hearing following a stewards'/~~judge's judges'~~ ruling shall not automatically stay the decision of the stewards/~~judge judges~~ regarding the penalty imposed. Any request for a stay of the penalty imposed shall specify the reasons supporting the issuance of a stay. The licensee's request for a stay must be in writing or on Form DBPR PMW-3090, Request for Stay, adopted and incorporated by Rule 61D-10.001, Florida Administrative Code. ~~The division, however, shall not give less than seven (7) days notice of hearing unless waived by the licensee requesting the appeal.~~

(2) Any party desiring a stay of stewards'/~~judge's judges'~~ ruling shall first seek the stay from the stewards/~~judge judges~~, who shall grant the stay unless:

(a) The stewards or division judge enter a suspension of 60 days and refer the matter to the division with a recommendation for entry of an emergency suspension pursuant to Section 120.60(6), Florida Statutes, or an order of summary suspension pursuant to Section 550.2415(3)(c), Florida Statutes; or

(b) The stewards or division judge find after a hearing with notice to the party seeking the stay that the stay is being sought solely for the purpose of delaying a penalty.

~~or deny the stay based on the following considerations: the severity of the violation, prior disciplinary history, the likelihood of the requesting party prevailing on appeal, the safety of the public, and the safety of the pari-mutuel wagering participants and racing animals. If the order appealed has the effect of suspending a license, a stay shall be granted as a matter of right upon reasonable conditions, unless the stewards determine that a stay of penalty would constitute a probable danger to the state's regulation of the pari-mutuel industry.~~

(3) The decision of the stewards/~~judge judges~~ shall be in writing and shall be transmitted to the division and the parties within 5 days from the date the request for stay is received by the stewards/~~judge judges~~.

~~(4)(3)~~ If the stewards/~~judge judges~~ do not grant a stay of the penalty, the party is entitled to seek a stay from the division. After reviewing the decision of the stewards or division judge, the request for stay and the record, ~~t~~The division shall:

(a) Deny the stay and issue an Administrative Complaint and emergency suspension pursuant to Section 120.60(6), Florida Statutes;

(b) Deny the stay and issue an Administrative Complaint and order of summary suspension pursuant to Section 550.2415(3)(b), Florida Statutes;

(c) Deny the stay and issue an order dismissing the appeal if the division finds that the appeal was filed solely to obtain a stay and delay the imposition of a penalty; or

~~(d) Grant or deny the stay based on the following considerations: the severity of the violation, the number of times the party requesting the stay has violated the same rule or statutory provision, the likelihood of the requesting party prevailing on appeal, the safety of the public, and the safety of the pari-mutuel wagering participants and racing animals. If the order appealed has the effect of suspending a license, a stay shall be granted as a matter of right upon reasonable conditions, unless the division determines that a stay of penalty would constitute a probable danger to the state's regulation of the pari-mutuel industry.~~

Specific Authority 120.80(4)(a), 550.0251(3), 550.1155(1) FS. Law Implemented 120.80(4)(a), 550.0251, 550.1155 FS. History—New 10-20-96, Amended 1-5-98, 4-12-06.