

**PUBLIC PROTECTION CABINET
KENTUCKY HORSE RACING COMMISSION
(New Administrative Regulation)**

810 KAR 7:030. Kentucky Thoroughbred Development Fund.

RELATES TO: KRS 138.510, 230.215, 230.225(5)(c), 230.400

STATUTORY AUTHORITY: KRS 230.215(2), 230.400

NECESSITY, FUNCTION AND CONFORMITY: KRS 230.215(1) declares that it is the policy and intent of the Commonwealth to foster and to encourage the business of legitimate horse racing with pari-mutuel wagering thereon in the Commonwealth on the highest possible plane. KRS 230.215(2) vests in the racing commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth and to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality. KRS 230.225(5)(c) states that the racing commission shall be responsible for recommending tax incentives and implementing incentive programs to ensure the strength and growth of the equine industry. KRS 230.400 establishes the Kentucky Thoroughbred Development Fund and requires the Kentucky Horse Racing Commission to promulgate administrative regulations as may be necessary to carry out its provisions and purposes. This administrative regulation establishes standards for eligibility and the administration of payments from the Kentucky Thoroughbred Development Fund.

Section 1. Definitions.

- (1) "Applicant" means the qualified entity who registers the foal or horse with the KTDF official registrar.
- (2) "Historical horse race handle" means monies wagered at a licensed Kentucky association on historical horse races as defined in 810 KAR 2:001.
- (3) "Inter-state wagering" means monies wagered from a Kentucky thoroughbred association on thoroughbred races conducted outside of Kentucky.
- (4) "Intra-state wagering" means monies wagered at a Kentucky thoroughbred association on thoroughbred races conducted at another Kentucky association.
- (5) "KTDF" means the Kentucky Thoroughbred Development Fund.
- (6) "KTOB" means the Kentucky Thoroughbred Owners and Breeders, Inc.
- (7) "Live racing handle" means the monies wagered by individuals present on association grounds on thoroughbred races physically conducted on association grounds.
- (8) "Nonlive racing handle" means the monies wagered at an association located in Kentucky on thoroughbred races not physically conducted at the association's grounds.
- (9) "Official Registrar" means the association recognized and designated as the sole official registrar of the KTDF for the purpose of registering Kentucky thoroughbred stallions and Kentucky bred thoroughbreds in accordance with KRS 230.400.

Section 2. KTDF Monies Earned.

- (1) One (1) live thoroughbred association.
 - (a) Live racing handle. An association conducting live racing shall earn KTDF money in the amount of 0.75 percent of the total live racing handle pursuant to KRS 138.510(1).
 - (b) Nonlive racing handle. An association conducting live racing shall earn KTDF money in the amount of two (2) percent of the total nonlive racing handle pursuant to KRS 138.510(2).

(2) More than one (1) live thoroughbred association. Unless there is an agreement among the thoroughbred associations conducting live racing to the contrary, if two (2) or more thoroughbred associations are conducting live racing on the same day, the monies earned from the handle for that day shall be divided as provided by this subsection.

(a) The association conducting the live racing shall earn KTDF money in the amount of seventy-five hundredths (0.75) percent of that association's live racing handle pursuant to KRS 138.510(1).

(b) Intra-state wagering monies shall be allocated to that Kentucky thoroughbred association on which the wagering is placed for purposes of calculating that association's KTDF earnings.

(c) Inter-state wagering monies originating from an association conducting live thoroughbred racing shall be allocated to that association for purposes of calculating that association's KTDF earnings.

(d) Inter-State wagering monies from all other Kentucky associations shall be divided evenly among the associations conducting live racing.

(3) Historical horse race handle. An association offering wagering on historical horse races shall earn KTDF money as provided by KRS 138.510(1).

(4) Unless otherwise stated, all KTDF money earned under this section shall be deposited in the KTDF account for that association.

Section 3. KTDF Reconciliation.

(1) Each association shall file with the commission a copy of the pari-mutuel tax form filed with the Department of Revenue, along with a copy of the check submitted for each report. These reports shall be filed weekly.

(2) Each association shall report to the commission the actual KTDF purse distribution within fifteen (15) calendar days after the last day of a live race meeting.

(3) The commission shall reconcile the weekly reports submitted by the association with the Department of Revenue's reports and deposits on a monthly basis.

(4) If at the close of a live race meet, an association has a balance of monies earned for that meet that has not been distributed in actual KTDF purse distribution, then the association may choose one of the following options to distribute the remaining balance, subject to the recommendation of the KTDF Advisory Committee and the approval of the commission:

(a) Use KTDF monies previously earned to supplement purses at future live racing meets held by that association; or

(b) Use KTDF monies previously earned to supplement purses already distributed at the last live racing meet held by the association to the recipients of the original purse allocations.

(5) If at the close of a live race meet, an association offering wagering on historical horse races has a balance of KTDF monies earned from historical horse race wagers that has not been distributed in actual KTDF purse distribution, then the association may distribute a portion of the balance, subject to the recommendation of the KTDF Advisory Committee and the approval of the commission:

(a) To supplement purses at future live racing meets held by that association;

(b) To supplement purses already distributed at the last live racing meet held by the association to the recipients of the original purse allocations; or

(c) To supplement purses at another licensed thoroughbred Kentucky racetrack.

(6) Reasonable and customary administrative charges for time spent reconciling the KTDF account may be charged by the commission to each association based on the percentage of funds generated by each association for the previous calendar year.

(7) An association, at its option, may pay advertising charges billed to the association by the

KTOB from the association's KTDF available balance.

(8) Each association shall sign an agreement stating that it accepts and agrees with the reconciliation prior to the reimbursement of any KTDF funds.

Section 4. Purse Structure. Each association shall submit its KTDF purse structure proposal to the KTDF Advisory Committee for approval at least forty-five (45) days prior to the opening day of the live racing meet. The KTDF Advisory Committee shall review the proposed purse structure and make a recommendation to the commission whether or not to approve the proposed purse structure based upon the best interests of Kentucky racing.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email John.Forgy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for eligibility and the administration of payments from the Kentucky Thoroughbred Development Fund ("KTDF").

(b) The necessity of this administrative regulation: This regulation is necessary to exercise the statutory authority set forth in KRS 230.400(7). Specifically, this regulation is necessary to establish the eligibility requirements for those desiring to receive distributions from the KTDF. While this is a new administrative regulation, it replaces 810 KAR 1:090.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the statutory authority granted to the Kentucky Horse Racing Commission by KRS 230.400(7).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the mandates in KRS 230.400.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary

of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects Kentucky's licensed racing associations that offer thoroughbred racing and purse supplements, owners of Kentucky-bred thoroughbreds, farm owners and employees, Kentucky veterinarians and equine health care facilities, horse transportation companies, farriers, farmers and suppliers of hay, feed and grain, equine supply companies providing medical sales, daily maintenance care and tack, Kentucky thoroughbred sale companies, equine tourism generating state/local room tax for lodging, gasoline tax on travel and transportation of horses, farm equipment retail stores, state and local payroll tax generated by the above businesses.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation updates the chapter number and references within the regulation. All entities identified in (3) will not require any additional responsibilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None of the entities identified in (3) will incur any costs in complying with the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? As a result of compliance, Kentucky thorough bred owners and breeders, and persons providing services related to thoroughbred horse will receive direct and indirect economic benefits from added purse money.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no increased cost. The KTDF is funded by the pari-mutuel tax established in KRS 138.510.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS 230.400(7).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Although specific dollar estimates cannot be determined, the greatest impact of this regulation for the first year to the state and local government will be the increase in payroll taxes imposed upon all participants as noted in the Regulatory Impact Analysis & Tiering Statement, Section (3).

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Although specific dollar estimates cannot be determined, continued growth and participation in the program over subsequent years will increase payroll taxes imposed upon all participants as noted in the Regulatory Impact Analysis & Tiering Statement, Section (3).

(c) How much will it cost to administer this program for the first year? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This administrative regulation establishes eligibility for Kentucky-bred horses to race for supplemental purse money at licensed Kentucky racetracks. This requirement provides economic support to all businesses and individuals who provide services necessary for the breeding, owning and racing of thoroughbred horses. See Regulatory Impact Analysis and Tiering Statement, Section (3).

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.