

**PUBLIC PROTECTION CABINET**  
**Kentucky Horse Racing Commission**  
**(New Administrative Regulation)**

**810 KAR 9:010. Hearings, reviews and appeals.**

RELATES TO: KRS 230.215(2), 230.310(2), 230.320, 230.330

STATUTORY AUTHORITY: KRS 230.215(2), 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 vests the Kentucky Horse Racing Commission with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. KRS 230.320(1) authorizes the commission to promulgate administrative regulations under which any license may be denied, suspended, or revoked, and under which any licensee or other person participating in Kentucky horse racing may be assessed an administrative fine or required to forfeit or return a purse. KRS 230.320(3) requires the commission to grant an appeal and administrative hearing in accordance with KRS Chapter 13B to any person whose license is denied, suspended, or revoked or who is assessed an administrative fine or required to return a purse. KRS 230.320(5) authorizes the commission to determine that certain appeals are frivolous and requires prescription of the factors leading to such a determination. KRS 230.370 authorizes the commission to promulgate any reasonable and necessary administrative regulation for the conduct of hearings before it.

Section 1. Stewards' and Judges' Hearings.

(1) A stewards' or judge's hearing, as applicable, shall be conducted by a state steward or a state judge unless waived in writing by the party charged with the violation.

(2) At least two (2) stewards or judges must be present at all times during the hearing. All three (3) stewards or judges shall review the evidence and testimony prior to issuing a ruling. A ruling shall be made by all three (3) stewards or judges sitting in the matter.

(3) A party charged with a violation other than a routine riding offense occurring in a race shall be given written notice of the stewards' or judges' hearing, unless waived in writing by the party charged.

(4) All stewards' and judges' hearings shall be closed, and the stewards and judges shall make no public announcement concerning a matter under investigation until the conclusion of the hearing.

(5) A state steward or a state judge shall conduct the hearing in such a manner as to ascertain and determine the substantial rights of the parties involved and shall not be bound by technical rules of procedure and evidence.

(6) All testimony shall be given under oath and a record shall be kept, either by use of an audio recorder or by court reporter's transcript. The party charged with the violation may, however, waive the recording and the transcription of the testimony. The stewards or judges shall not be required to receive testimony in cases where their ruling is based solely upon a review of the video replay of a race.

(7) If, after the hearing, the stewards or judges find that a statute or an administrative regulation has been violated, they shall promptly issue a written ruling setting forth the:

- (a) Full name of every person charged with the violation;
- (b) Identification of licensees charged with the violation;
- (c) Statute or administrative regulation number and pertinent parts of the statute or administrative regulation violated;
- (d) Findings; and

(e) Penalty.

(8) Copies of the ruling shall be delivered to:

(a) Each party in interest;

(b) The commission; and

(c) The office of the Association of Racing Commissioners International, and in Standard-bred racing, to the United States Trotting Association.

(9) Any party who is the subject of any order or ruling of the stewards or judges may apply for a commission hearing pursuant to KRS Chapter 13B, except as to:

(a) Determinations of whether or not a horse or horses in a race shall be disqualified for fouls committed during the race; or

(b) Findings of fact as to all matters occurring during and incident to the running of a race.

(10) An application to the commission for review of a stewards' or judges' order or ruling shall be made within ten (10) days after the order or ruling is issued in writing on the "Notice of Appeal," KHRC 9-010-1.

(11) An application to the executive director for a stay of a stewards' or judges' order or ruling shall be made in writing within ten (10) days after the order or ruling is issued on the "Request for Stay Pending Appeal", KHRC 9-010-2.

Section 2. Frivolous Appeals. The commission may determine that an appeal of a stewards' or judges' order or ruling, or any other administrative appeal to the racing commission by a licensee or other person participating in Kentucky horse racing, is frivolous. An appeal shall be presumed to be frivolous if:

(1) The applicant seeks review by the commission but fails, without good cause, to appear for proceedings;

(2) The applicant attends the commission hearing but fails, without good cause, to offer evidence to support the application for review; or

(3) The appeal is totally lacking in merit such that it appears to have been taken in bad faith.

Section 3. Commission Hearings.

(1) Except where precluded by another provision of KRS Chapter 230 or this administrative regulation, commission hearings shall be conducted in accordance with KRS Chapter 13B.

(2) Copies of all final commission orders or rulings related to licensing of individuals shall be forwarded to the office of the Association of Racing Commissioners International, and, in standardbred racing, to the United States Trotting Association.

Section 4. Appeal from Commission Order. Any person or licensee aggrieved by any order or decision of the commission may appeal to the Franklin Circuit Court in accordance with KRS 230.330.

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) The "Notice of Appeal", KHRC 9-010-1; and

(b) The "Request for Stay Pending Appeal", KHRC 9-010-2.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the KHRC Web site at <http://khrc.ky.gov>.

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 27, 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](mailto: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 procedures for stewards' and judges' hearings and commission hearings.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to enforce the Kentucky Horse Racing Commission's regulations through the establishment of hearing procedures to adjudicate violations of the regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation conforms to the authorizing statutes by allowing the commission to enforce its regulations by establishing a procedure to adjudicate violations of the commission's regulations. KRS 230.370 authorizes the commission to promulgate any reasonable and necessary administrative regulation for the conduct of hearings before it.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation permits the commission to adjudicate violations of the commission's regulations in a structured and consistent way that comports with the requirements of due process of law.

(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: The Commission and any licensed participant in horse racing is potentially affected by this administrative regulation. In the year 2017, the Commission licensed 22,745 individuals to participate in horse racing. In addition, seven racing associations, three totalizator companies, and ten advance deposit wagering companies are currently licensed by the Commission and potentially affected by this administrative regulation.

(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: Persons charged with a violation of the Kentucky Horse Racing Commission's regulations will be required to conform to the procedures established in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities participating in the administrative process will face potential costs of subpoenas and witnesses consistent with existing practices of the commission under 810 KAR 1:029 and 811 KAR 1:105.

(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: Any necessary funding will be provided from the budget of the Kentucky Horse Racing Commission.

(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 additional 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 directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative 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. KRS 230.215, 230.320, 230.370.

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? This administrative regulation will not generate revenue for state or local government.

(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? This administrative regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? No revenue will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No revenue will be required to administer this regulation for the first year.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.