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REGULATIONS COMPILER

1 PUBLIC PROTECTION CABINET

2 Kentucky Horse Racing Commission

3 (New Administrative Regulation)

4 810 KAR 3:040 Advance deposit account wagering

5 RELATES TO: KRS 230.260, 230.290, 230.310, 230.320

6 STATUTORY AUTHORITY: KRS 230.215(2), 230.260(2), 230.310, 230.370

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the
8 authority to regulate conditions under which horse racing and pari-mutuel wagering thereon
9 shall be conducted in Kentucky. KRS 230.260(2) authorizes the Kentucky Horse Racing
10 Commission to issue licenses to any person or entity that offers advance deposit account
11 wagering to Kentucky residents. This administrative regulation establishes the license application
12 procedures and requirements to offer advance deposit account wagering to Kentucky residents.

13 Section 1. Definitions. (1) "Account" means an account for advance deposit account
14 wagering with a specific identifiable record of deposits, wagers, and withdrawals established by
15 an account holder and managed by the advance deposit account wagering licensee.

16 (2) "Account holder" means an individual who successfully completed an application and
17 for whom the advance deposit account wagering licensee has opened an account.

18 (3) "Advance deposit account wagering" is defined by KRS 230.210(1).

19 (4) "Advance deposit account wagering licensee" is defined by KRS 230.210(2).

1 (5) "Applicant" means an individual, person, or entity that has submitted an application for
2 a license pursuant to this administrative regulation.

3 (6) "Association" is defined by KRS 230.210(5).

4 (7) "Confidential information" means:

5 (a) The amount of money credited to, debited from, withdrawn from, or present in any
6 particular account holder's account;

7 (b) The amount of money wagered by a particular account holder on any race or series of
8 races;

9 (c) The account number and secure personal identification code of a particular account
10 holder;

11 (d) The identities of particular racing associations on which the account holder is wagering
12 or has wagered; and

13 (e) Unless otherwise authorized by the account holder, the name, address, and other
14 information in the possession of the advance deposit account wagering licensee that would
15 identify the account holder to anyone other than the commission or the advance deposit account
16 wagering licensee.

17 (8) "Individual" means a natural person, at least eighteen (18) years of age, but does not
18 include any corporation, partnership, limited liability company, trust, or estate.

19 (9) "Kentucky resident" is defined by KRS 230.210(12).

20 (10) "Nominal change in ownership" is defined by 810 KAR 3:001, Section 1(26).

1 (11) "Person" means any corporation, whether organized for profit or not, partnership,
2 limited liability company, trust, estate, association, joint venture, or any other group or
3 combination acting as a unit.

4 (12) "Principal" means any of the following individuals associated with a partnership, trust
5 association, limited liability company, or corporation:

6 (a) The chairman and all members of the board of directors of a corporation;

7 (b) All partners of a partnership and all participating members of a limited liability company;

8 (c) All trustees and trust beneficiaries of an association;

9 (d) The president or chief executive officer and all other officers, managers, and employees
10 who have policy-making or fiduciary responsibility within the organization;

11 (e) All stockholders or other individuals who own, hold, or control, either directly or
12 indirectly, five percent (5%) or more of stock or financial interest in the collective organization;
13 and;

14 (f) Any other employee, agent, guardian, personal representative, or lender or holder of
15 indebtedness who has the power to exercise a significant influence over the applicant's or
16 licensee's operation.

17 (13) "Substantial change in ownership" is defined by 810 KAR 3:010, Section 1(39).

18 (14) "Telephone account wagering" is defined by KRS 230.210(19).

19 (15) "Totalizator" or "Totalizator system" means the system, including hardware, software,
20 communications equipment, and electronic devices, that accepts and processes the cashing of
21 wagers, calculates the odds and prices of the wagers, and records, displays, and stores pari-
22 mutuel wagering information.

1 Section 2. License Required to Conduct Advance Deposit Account Wagering. (1) Any
2 individual, person, or entity, other than a licensed association engaged in telephone account
3 wagering as defined in KRS 230.210(20), that offers advance deposit account wagering to
4 Kentucky residents shall be licensed by the commission.

5 (2) To obtain a license, an applicant shall apply to the commission for a license on the
6 Initial/Renal License Application to Conduct Advance Deposit Account Wager, Form KHRC 3-030-
7 01.

8 (3) An initial license shall be effective, and the advance deposit account wagering licensee
9 may begin operations, upon approval of the commission.

10 (4) A license to conduct advance deposit account wagering shall be renewed annually on or
11 before September 1 of the preceding year, except as provided in Section 7 of this administrative
12 regulation. The commission shall render a decision on the renewal application on or before
13 December 15 of the preceding year. If approved, a renewal license shall be effective January 1.

14 (5) If an applicant is unable, despite best efforts, to provide all of the required information,
15 the applicant shall fully explain and document its reasons to the satisfaction of the commission,
16 and shall provide the information promptly upon being able to do so.

17 Section 3. Licensing Fees and Costs. (1) An annual license fee of \$1,000 shall be payable to
18 the commission upon submission of a license application. A license application shall not be
19 complete until receipt of the license fee each year.

20 (2)(a) The applicant shall pay all costs incurred by the commission in reviewing an
21 application for an initial or renewal license, including

22 1. Legal and investigative costs, and

1 2. The cost of performing background checks on any individual or organization associated
2 with the applicant.

3 (b) To cover these costs, initial applicants shall submit with the application an investigation
4 fee of \$5,000.

5 (c) Any portion of the payment not required to complete the investigation shall be refunded
6 to the applicant within twenty (20) days of the granting, withdrawal, or rejection of the initial
7 license application.

8 (d) If the commission determines that investigation of a renewal applicant or an applicant
9 that is proposing to undergo a substantial change in ownership is necessary, the applicant shall
10 submit a cashier's check or certified check payable to the commission in an amount requested
11 by the commission within ten (10) days of receipt of request. Failure to submit the payment shall
12 result in suspension of the processing of renewing the license and may result in denial of the
13 license.

14 (e) To the extent additional costs become necessary to investigate an applicant for a license
15 or a substantial change in ownership of an applicant, the applicant shall submit a cashier's check
16 or certified check payable to the commission in an amount reasonably requested by the
17 commission within ten (10) days of receipt of the request. Failure to submit an additional
18 requested payment shall result in suspension of the processing of the license application and may
19 result in denial of the license.

20 (f) The commission may waive the investigation fees, in part or completely, if the applicant
21 has undergone a certification process or other investigative review by a commission-approved
22 industry or regulatory body.

1 Section 4. License Application Procedures. (1) The commission may deny a license to any
2 applicant that provides false or misleading information on or omits material information from
3 the application.

4 (2) In addition to the complete application, an applicant shall provide to the commission:

5 (a) Audited financial statements for the last three (3) years or, if the applicant does not have
6 audited financial statements, financial and other pertinent information as required by the
7 commission to determine that the applicant is financially capable of operating as a going concern
8 and protecting accounts;

9 (b) A detailed plan of how the advance deposit account wagering system will operate; and

10 (c) A list of all personnel processing wagers on races made by Kentucky residents. This list
11 shall be kept current and be provided to the commission upon request.

12 (3) The commission may require changes in the proposed plan of operations as a condition
13 of granting a license. There shall not be subsequent material changes in the plan of operations
14 unless ordered by the commission or until approved by the commission after receiving a written
15 request.

16 (4) The commission may require a report to be conducted in accordance with the Service
17 and Organization Controls 1 Report (SOC-1), or a replacement report approved by the Auditing
18 Standards Board of the American Institute of Certified Public Accountants, or other independent
19 report in a form acceptable to the commission, to evaluate the applicant's control objectives,
20 control activities, and control processes. The commission may require that the report be
21 conducted within the twelve (12) months before issuing an initial license and annually in order
22 to receive a renewal license; and

1 (5) In reviewing an application, the commission may consider any information, data,
2 reports, findings, or other factors available that it considers important or relevant to its
3 determination of whether the applicant is qualified to hold a license, including the following:

4 (a) The integrity of the applicant and its principals, including:

5 1. Whether the applicant or its principals is unsuitable pursuant to KRS 230.280(2)(f);

6 2. Whether the applicant or its principals has been a party to litigation over business practices,
7 disciplinary actions over a business license, or refusal to renew a license;

8 3. Whether the applicant or its principals has been a party to proceedings in which unfair
9 labor practices, discrimination, or violation of government regulations pertaining to racing or
10 gaming laws was an issue, or bankruptcy proceedings;

11 4. Whether the applicant or its principals has failed to satisfy judgments, orders, or decrees;

12 and

13 5. Whether the applicant or its principals has been delinquent in filing tax reports or
14 remitting taxes;

15 (b) The quality of physical facilities and equipment;

16 (c) The financial ability of the applicant to conduct advance deposit account wagering;

17 (d) The protections provided to safeguard accounts, including a certification from the
18 licensee's chief financial officer that account funds will not be comingled with other funds as
19 required in Section 8(13) of this administrative regulation;

20 (e) The management ability of the applicant and its principals;

21 (f) Compliance of the applicant with applicable statutes, charters, ordinances, and
22 administrative regulations;

1 (g) The efforts of the applicant to promote, develop, and improve the horse racing industry
2 in the Commonwealth;

3 (h) The efforts of the applicant to safeguard and promote the integrity of pari-mutuel
4 wagering in the Commonwealth; and

5 (i) The economic impact of the applicant upon the Commonwealth.

6 Section 5. License Applicant Presentation. (1) An applicant that has submitted a completed
7 license application and all accompanying fees may request or be required to make a presentation
8 of its application at a meeting of the commission prior to the ruling on the application.

9 (2) The presentation shall be limited to information contained in the application and any
10 supplemental information relevant to the applicant's suitability. The admission of supplemental
11 information shall be subject to the discretion of the commission.

12 Section 6. Additional Information. The commission may request additional information
13 from an applicant if the additional information would assist the commission in deciding whether
14 to issue or renew a license, including:

15 (1) Copies of any documents used by the applicant in preparing the application; and

16 (2) A list of all contracts between the applicant and third parties related to operations. The
17 commission may review the contracts any time upon request.

18 Section 7. Duration of License. (1) An initial license issued under this administrative
19 regulation before July 1 shall be valid for the calendar year for which it is issued.

20 (2) An initial license issued under this administrative regulation on or after July 1 shall be
21 valid for the calendar year for which it is issued and the following calendar year.

1 Section 8. Operations and Duties of Licensees. (1) Before doing business in Kentucky, the
2 licensee shall be qualified to do business in Kentucky.

3 (2) The licensee shall notify the commission of any communication, report, or investigation
4 conducted or to be conducted by the Thoroughbred Racing Association, Thoroughbred Racing
5 Protective Bureau, United States Trotting Association, American Quarter Horse Association,
6 Arabian Jockey Club, National Thoroughbred Racing Association, or any state or federal
7 regulatory agency that relates to the safety, integrity, or security of the licensee and its
8 participants, or that would reasonably be deemed to affect public confidence in the licensee. The
9 licensee shall further send a copy of any such communication, correspondence, or report to the
10 commission within 24 hours of receipt by the licensee. This regulation shall not be construed to
11 include information delivered to licensee officials acting in the capacity of members of the board
12 of directors of the above referenced organizations.

13 (3) In addition to the information the commission may request under this or any other
14 applicable administrative regulation or statute, the commission may require the licensee to remit
15 contemporaneously to the commission a copy of any documents required to be filed with any
16 local, state, or federal regulatory agency.

17 (4) The licensee shall notify the KHRC within 24 hours of becoming aware of any suspected
18 or confirmed breach of security of data, including intrusions into the personal information of
19 account holders.

20 (5) The licensee shall notify the KHRC within 24 hours of becoming aware of a wagering
21 anomaly. The licensee shall provide transactional data to the KHRC upon request. Wagering

1 anomalies include any incident that might reasonably affect the public's confidence in the
2 wagering pools, such as:

3 (a) Account wagering fraud;

4 (b) Suspected manipulation through computerized robotic wagering;

5 (c) Odds manipulation

6 (d) Quick pick or random pick malfunction;

7 (e) Cancellation of large wagers, especially within 2 minutes of the closing of a wagering
8 pool;

9 (f) Suspicious wagering patterns; and

10 (g) Totalizator or data communications malfunctions.

11 (6) All notices required to be given to the commission pursuant to Sections 2 through 5 of
12 this administrative regulation shall be provided by phone call to the executive director or the
13 director of pari-mutuel wagering and compliance immediately after the event triggering the
14 notice requirement. In addition, written notice of the event shall be submitted to the executive
15 director and the director of pari-mutuel wagering and compliance no later than twenty-four (24)
16 hours after the event triggering the notice requirement. Written notice may be made by hand
17 delivery, electronic mail, or facsimile. All notices other than those in Sections 1 through 3 shall
18 be provided to the director of pari-mutuel wagering and compliance within five (5) business days
19 of the event unless otherwise specifically instructed in these regulations.

20 (7) The licensee shall submit to the director of pari-mutuel wagering and compliance or his
21 or her designee an electronic copy of the Advanced Deposit Wagering Excise Tax Report

1 (Kentucky Form 73A102) no later than the first business day of the week next succeeding the
2 week during which the wagers forming the base of the tax were received.

3 (8) A licensee shall submit to the commission a separate report for each affiliate under the
4 control of the licensee on the form "Kentucky Horse Racing Commission Quarterly ADW Activity
5 Report," KHRC 3-040-04, that includes the following information:

6 (a) For account holders residing in Kentucky:

- 7 1. The total amount wagered on races conducted by all Kentucky associations; and
- 8 2. The total amount wagered on races conducted by all non-Kentucky associations.

9 (b) For account holders not residing in Kentucky, the total amount wagered on races
10 conducted by each Kentucky association.

11 (9) The Kentucky Horse Racing Commission Quarterly ADW Activity Report shall be
12 submitted to the commission according to the following schedule:

13 (a) For wagering from January 1 through and including March 31, the report shall be
14 submitted no later than the first business day following March 14 of the same calendar year;

15 (b) For wagering from April 1 through and including June 30, the report shall be submitted
16 no later than the first business day following July 14 of the same calendar year;

17 (c) For wagering from July 1 through and including September 30, the report shall be
18 submitted no later than the first business day following October 14 of the same calendar year;

19 and

20 (d) For wagering from October 1 through and including December 31, the report shall be
21 submitted no later than the first business day following January 14 of the next calendar year.

1 (10) On or prior to the third Friday of September of each year, the licensee shall submit to
2 the commission the form "Kentucky Horse Racing Commission ADW Player Account Balance and
3 Excise Tax Summary Report" certifying the average daily account total for all account holders
4 residing in Kentucky between the first Monday of March of that calendar year and the last Sunday
5 of August of the same calendar year.

6 (11) On or prior to the third Friday of September of each year, the licensee shall submit to
7 the commission the form "Kentucky Horse Racing Commission ADW Player Account Balance and
8 Excise Tax Summary Report," KHRC 3-040-05, certifying the average weekly excise tax amount
9 paid to the Commonwealth of Kentucky between the first Monday of March of that calendar year
10 and the last Sunday of August of the same calendar year.

11 (12) A licensee shall enter into an agreement with each licensed racing association in the
12 Commonwealth on whose races the licensee offers advance deposit account wagering regarding
13 payment of host fees and any other applicable fees, costs, or payments of any kind to be paid to
14 the licensed association. The licensed racing association and the applicable horsemen's
15 organization shall negotiate a separate agreement for contributions to the purse account
16 generated by advanced deposit account wagering.

17 (13) A licensee shall not comingle account funds with other funds.

18 (14) A licensee that does not have audited financial statements for the last three (3) years
19 as referenced in Section 4(1)(d) of this administrative regulation shall provide quarterly financial
20 statements to the commission for the first calendar year of operation.

21 (15) A licensee shall use and communicate pari-mutuel wagers to a totalizator system
22 licensed by the commission.

1 (16) The licensee shall require its licensed totalizator company to provide all wagering data
2 requested by the KHRC or its designee with respect to any website, affiliate, or any other such
3 entity related to the licensee through which the licensee facilitates wagers by Kentucky account
4 holders or by any account holder who is not a Kentucky resident and who is wagering on Kentucky
5 races.

6 (17) A licensee shall operate and communicate with the totalizator system in such a way as
7 not to provide or facilitate a wagering advantage based on access to information and processing
8 of wagers by account holders relative to persons who wager at licensed associations or simulcast
9 facilities.

10 (18) All personnel processing wagers made by Kentucky residents shall be licensed in the
11 jurisdiction where they are located. If an individual is located in a jurisdiction that is not a racing
12 jurisdiction or that does not require a license, that individual shall be licensed in Kentucky.

13 (19) Accounts shall only be accepted in the name of an individual and shall not be
14 transferable. Only individuals who have established accounts with a licensee may wager through
15 a licensee.

16 (20) Each account holder shall provide personal information as the licensee and the
17 commission require.

18 (a) Required information shall include:

- 19 1. Name;
- 20 2. Principal residence address;
- 21 3. Telephone number;
- 22 4. Social Security number;

1 5. Date of birth; and

2 6 Other information necessary for account administration.

3 (b) The information supplied by the account holder shall be verified by the licensee using
4 means acceptable to the commission.

5 (21) The licensee shall provide each account holder a secure personal identification code
6 and password to be used by the account holder to confirm the validity of every account
7 transaction.

8 (22) An employee or agent of the licensee shall not disclose any confidential information
9 except:

10 (a) To the commission;

11 (b) To the account holder as required by this administrative regulation;

12 (c) To the licensee and its affiliates;

13 (d) To the licensed association as required by the agreement between the licensee and the
14 association; and

15 (e) As otherwise required by law.

16 (23) The licensee shall provide each account holder a copy of account holder policies and
17 procedures related to pari-mutuel wagering, including the licensee's refund policy, and other
18 information and materials that are pertinent to the operation of the account. This information
19 shall be available on the licensee's official website and shall be viewable without registering for
20 an account with the licensee.

1 (24) The licensee shall publish a list of racing associations that have authorized the licensee
2 to participate in their wagering pools. This list shall be viewable without registering for an account
3 with the licensee.

4 (25) The licensee may refuse to establish an account if it is found that any of the information
5 supplied is false or incomplete or for any other reason the licensee deems sufficient.

6 (26) Each account shall be administered in accordance with the account holder rules/terms
7 of agreement provided to account holders, including, but not limited to:

- 8 (a) Placing of wagers;
- 9 (b) Deposits to accounts;
- 10 (c) Credits to accounts;
- 11 (d) Debits to accounts;
- 12 (e) Refunds to accounts;
- 13 (f) Withdrawals from accounts;
- 14 (g) Minimum deposit requirements;
- 15 (h) Fees per wager; and
- 16 (i) Rebates.

17 (27) Each licensee shall have protocols in place and shall publicize to its account holders
18 when its wagers are excluded from a host track's wagering pool. These protocols shall include an
19 immediate electronic mail message to affected account holders and immediate posting on the
20 licensee's website.

21 (28) A licensee shall maintain complete records of the application and the opening of an
22 account for the life of the account plus two (2) additional years. A licensee shall also maintain

1 complete records of the closing of an account for two (2) years after closing. These records shall
2 be provided to the commission upon request.

3 (29) A licensee shall maintain complete records of all transactions, including deposits,
4 credits, debits, refunds, withdrawals, fees, wagers, rebates, and earnings for two (2) years. These
5 records shall be provided to the commission upon request.

6 (30) All wagering conversations, transactions, or other wagering communications, verbal or
7 electronic, shall be recorded by means of the appropriate electronic media, and the tapes or
8 other records of the communications shall be kept by the licensee for a period of two (2) years.
9 These tapes and other records shall be made available to the commission upon request.

10 (31) The recording of the confirmation of the transaction, as reflected in the voice or other
11 data recording, shall be deemed to be the actual wager regardless of what was recorded by the
12 totalizator system.

13 (32) A licensee shall not accept wagers if its recording system is not operable.

14 (33) The licensee shall synchronize its timing system with the U.S. Naval Observatory Clock
15 or an alternative time synchronization methods approved by the commission at least once every
16 twenty-four (24) hour period.

17 (34) The commission may monitor the equipment and staff and review the records of a
18 licensee and any of the transactions conducted by the licensee with regards to wagers made by
19 Kentucky residents.

20 (35) A licensee may suspend or close any account for violation of its account holder
21 rules/terms of agreement, or any other reason it deems sufficient, if it returns to the account
22 holder all monies then on deposit within seven (7) calendar days.

1 Section 9. Surety Bond or Letter of Credit Required. (1) Prior to commencement of advance
2 deposit account wagering operations, a licensee shall secure an irrevocable bond from a surety
3 company admitted to the Commonwealth of Kentucky or other form of financial security such as
4 an irrevocable letter of credit in favor of the Commonwealth of Kentucky. A certified copy of the
5 bond shall be submitted to the commission and shall be accompanied by a certified copy of the
6 "Advance Deposit Wagering Provider Surety Bond or Letter of Credit Form," KHRC 3-040-03.

7 (2) The bond or letter of credit amount shall be 125% of the amount reported in Part II plus
8 400% of the amount report in Part III of the form "Kentucky Horse Racing Commission ADW
9 Player Account Balance and Excise Tax Summary Report," KHRC 3-040-05 unless any of the
10 following conditions apply:

11 (a) If the licensee was not licensed for operation in the Commonwealth of Kentucky prior
12 to January 1 of the current calendar year, the bond or letter of credit amount shall be \$50,000.00;

13 (b) If the sum of the amounts equaling 125% of the amount reported in Part II plus 400% of
14 the amount report in Part III of the form "Kentucky Horse Racing Commission ADW Player
15 Account Balance and Excise Tax Summary Report," KHRC 3-040-05, is less than or equal to
16 \$50,000, the bond or letter of credit amount shall be \$50,000; or

17 (c) If the sum of the amounts equaling 125% of the amount reported in Part II plus 400% of
18 the amount report in Part III of the form "Kentucky Horse Racing Commission ADW Player
19 Account Balance and Excise Tax Summary Report," KHRC 3-040-05, exceeds \$500,000, the bond
20 or letter of credit amount shall be \$500,000.

21 (3) The bond or letter of credit shall, if necessary, be used to:

1 (a) Comply with and perform the provisions and undertakings of the advance deposit
2 account wagering licensee set forth in the application as finally approved by the commission;

3 (b) Discharge the licensee's financial obligations to account holders who are Kentucky
4 residents;

5 (c) Discharge payment of all taxes and expenses due by the licensee to the Commonwealth;
6 and

7 (d) Discharge the licensee's financial obligations to any racing association or simulcast
8 facility licensed by the commission.

9 Section 10. Change in Ownership. (1) A change in ownership shall be reported to the
10 commission on the Advance Deposit Wagering Change of Control Form, KHRC 3-040-02.

11 (2) Notice of a nominal change in ownership shall be filed with the commission within
12 fifteen (15) days of the execution of the documents upon which the proposed nominal change is
13 based.

14 (3) Notice of a change of ownership shall not be required for:

15 (a) A nominal change of ownership if the licensee is a publicly traded corporation;

16 (b) The transfer of an ownership interest in a licensee, direct or indirect, whether
17 substantial or nominal, if by a publicly traded corporation and the beneficial ownership is
18 acquired by a person who shall hold the voting securities of the publicly traded corporation for
19 investment purposes only; or

20 (c) A debt transaction of a publicly traded corporation, unless such transaction results in
21 the pledge or encumbrance of the assets or any portion thereof of the licensee.

1 (4) Notice of a substantial change in ownership shall be filed with the commission prior to
2 the execution of the documents upon which the proposed substantial change is based and shall
3 constitute a request for approval of the change.

4 (a) Absent prior written approval from the commission, a substantial change in ownership
5 shall result in termination of the license.

6 (b) Any attempt to effect substantial change in ownership not in writing shall be considered
7 void by the commission.

8 Section 11. Unlicensed Activity. With respect to any individual, person, or entity that
9 offers advanced deposit account wagering to Kentucky residents without a license issued by the
10 commission, the commission may take the measures it deems necessary, including referral to
11 the appropriate regulatory and law enforcement authorities for civil action or criminal
12 penalties.

13 Section 12. Incorporation by Reference. (1) The following material is incorporated by
14 reference:

15 (a) "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering",
16 KHRC 3-040-1;

17 (b) "Advance Deposit Account Wagering Change of Control Form", KHRC 3-040-2;

18 (c) "Advance Deposit Wagering Provider Surety Bond or Letter of Credit Form", KHRC 3-040-
19 3;

20 (d) "Kentucky Horse Racing Commission Quarterly ADW Activity Report", KHRC 3-040-4;

21 and

1 (e) "Kentucky Horse Racing Commission ADW Player Account Balance and Excise Tax
2 Summary Report", KHRC 3-040-5.

3 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law,
4 at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington,
5 Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m.

6 (3) This material may also be obtained at the commission's Web site, <http://khrc.ky.gov>.

810 KAR 3:040

READ AND APPROVED:

Franklin S. Kling, Jr.
Franklin S. Kling, Jr., Chairman
Kentucky Horse Racing Commission

11/12/18
Date

K. Gail Russell
K. Gail Russell, Acting Secretary
Public Protection Cabinet

11/13/18
Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 1:30 p.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 405011. 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, KY 40511
Phone: (859) 246-2040
Facsimile: (859) 246-2039
Email: John.Forgy@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No.: 810 KAR 3:040

Contact Person: John L. Forgy, General Counsel, Kentucky Horse Racing Commission; Telephone: (859) 246-2040; Email: John.Forgy@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensing application procedures for entities that offer advance deposit account wagering on horse races to Kentucky residents.

(b) The necessity of this administrative regulation: This new administrative regulation is being promulgated as part of a comprehensive revision of the Kentucky Horse Racing Commission's regulatory scheme. This regulation is intended to replace previous regulations concerning the same subject matter which are being concurrently repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation describes the process, fees, procedures, and criteria for granting/denying association applications as authorized by KRS 230.260. Jurisdiction and authority to promulgate such regulation is set forth in KRS 230.260.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This is a new regulation that prescribes procedures, fees, requirements, and criteria when granting or denying an application to offer advance deposit account wagering to Kentucky residents.

(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: Entities that offer advance deposit account wagering to Kentucky residents are affected. Racing associations and horsemen are also affected.

(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: The entities seeking to offer advance deposit account wagering to Kentucky residents will be required to complete the application form and disclosure requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The applicants will be required to pay an initial license fee of \$5,000.00 and an annual licensing fee of \$1000.00. The applicants will also be responsible for paying the cost of any necessary background checks. Licensees will be required to secure a bond or letter of credit of up to and a Statement on Standards for Attestation Engagements, Number 16, report may have to be submitted.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be greater transparency regarding the monies wagered through advance deposit account wagering companies. Race tracks and horsemen will benefit from contribution to purse accounts. The regulation also provides some protections for account holders.

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

(a) Initially: The total initial cost would be expected to be minimal since most of the regulatory personnel and regulatory infrastructure are currently in place.

(b) On a continuing basis: The total ongoing cost would be expected to be minimal since most of the regulatory personnel and regulatory infrastructure are currently in place.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The licensee will also be required to reimburse the commission pursuant to KRS 230.240 to cover the commission's increased regulatory costs relating to compensation of additional personnel and other expenses.

(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: The licensee will also be required to reimburse the commission pursuant to KRS 230.240 to cover the

commission's increased regulatory costs relating to compensation of additional personnel and other expenses.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: An initial license fee of \$5,000.00 is required to cover all initial regulatory costs and for background checks. An annual license fee of \$1000 is established to cover the regulatory costs.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.) Tiering is applied to determine the amount of a licensee's required surety bond or letter of credit. This is dependent on the average amount of money held by the licensee Kentucky account holders over a six-month period and the average excise tax paid by the licensee over a six-month period. The excise tax paid depends on the amount of wagering activity conducted by patrons utilizing the services of a licensee.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No.: 810 KAR 3:040

Contact Person: John L. Forgy, General Counsel, Kentucky Horse Racing Commission; Telephone: (859) 246-2040; Email: John.Forgy@ky.gov

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 230.215, 230.260, 230.310, and 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. No estimated change in expenditures or revenues.

(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). None

(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, 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). Based on the previous fiscal year and the projected growth of advance deposit wagering, it is expected that approximately \$1.15 million in excise taxes will be collected, in addition to payroll taxes imposed upon all employees of licensees in the Commonwealth.

(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 provides eligibility requirements for accessing the backside improvement fund. As licensed thoroughbred racing associations continue to access the funds, individuals identified in the Regulatory Impact Analysis and Tiering Statement will receive increase in revenue.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

1. "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering", KHRC 3-040-1; is the 15 page form to be submitted by an applicant to the KHRC for an initial or renewal license to offer advance deposit wagering under the jurisdiction of the KHRC.
2. "Advance Deposit Account Wagering Change of Control Form", KHRC 3-040-2, is the 14 page form to be submitted by an advance deposit wagering licensee to the KHRC when the licensee seeks approval to undergo a change of control.
3. "Advance Deposit Wagering Provider Surety Bond or Letter of Credit Form", KHRC 3-040-3, is the 3 page form submitted by a licensee to secure compliance by the licensee with applicable statutes and regulations relating to advance deposit wagering in Kentucky;
4. "Kentucky Horse Racing Commission Quarterly ADW Activity Report", KHRC 3-040-4, is the 1 page form submitted quarterly by a licensee to report advance deposit wagering activities as required by this administrative regulation; and
5. "Kentucky Horse Racing Commission ADW Player Account Balance and Excise Tax Summary Report", KHRC 3-040-5, is the 1 page form submitted by a licensee to record account balances and the excise tax imposed upon advance deposit wagering that is owed to the Commonwealth of Kentucky.