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MEMORANDUM

TO: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission

FROM: Emily Caudill, Regulations Compiler

RE: Proposed Amendment or New Regulation – 810 KAR 002:100, 810 KAR 004:090, 810 KAR 007:030, and 810 KAR 007:060

DATE: May 12, 2023

A copy of each administrative regulation listed above is enclosed for your files. These regulations are tentatively scheduled for review by the Administrative Regulation Review Subcommittee at its **AUGUST 2023** meeting. We will notify you of the date and time of this meeting once it has been scheduled.

Pursuant to KRS 13A.280, *if* comments are received during the public comment period, a Statement of Consideration or a one-month extension request for these regulations is due **by noon on August 15, 2023**. Please reference KRS 13A.270 and 13A.280 for other requirements relating to the public hearing and public comment period and Statements of Consideration.

If you have questions, please contact us at RegsCompiler@LRC.ky.gov or (502) 564-8100.

Enclosures

FILED WITH LRC
TIME: 9 am
MAY 12 2023
Emily B Caudill
REGULATIONS COMPILER

1 PUBLIC PROTECTION CABINET

2 KENTUCKY HORSE RACING COMMISSION

3 (Amendment)

4 810 KAR 7:030. Kentucky Thoroughbred Development Fund.

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

6 STATUTORY AUTHORITY: KRS 230.215(2), 230.400

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(1) declares that it is the policy
8 and intent of the Commonwealth to foster and to encourage the business of legitimate horse
9 racing with pari-mutuel wagering thereon in the Commonwealth on the highest possible plane.
10 KRS 230.215(2) vests in the racing commission forceful control of horse racing in the
11 Commonwealth with plenary power to promulgate administrative regulations prescribing
12 conditions under which all legitimate horse racing and wagering thereon is conducted in the
13 Commonwealth so as to encourage the improvement of the breeds of horses in the
14 Commonwealth and to regulate and maintain horse racing at horse race meetings in the
15 Commonwealth of the highest quality. KRS 230.225(5)(c) states that the racing commission shall
16 be responsible for recommending tax incentives and implementing incentive programs to ensure
17 the strength and growth of the equine industry. KRS 230.400 establishes the Kentucky
18 Thoroughbred Development Fund and requires the Kentucky Horse Racing Commission to
19 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.]~~

(1) [(5)] "KTDF" means the Kentucky Thoroughbred Development Fund, as established by KRS 230.400.

(2) "KTDF Advisory Committee" means a five (5) member committee established by KRS 230.400.

(3) [(6)] "KTOB" means the Kentucky Thoroughbred Owners and Breeders, Inc., as the official registrar for the KTDF in accordance with KRS 230.400.~~[(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.~~

~~(4) [(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.]~~

~~(4) "Licensed association" means a person or legal entity conducting horse racing pursuant to a license issued under 810 KAR 3:010.~~

Section 2. KTDF Monies Earned.

~~Money shall be allocated to the credit of each licensed association in the amount the licensed association contributed to the KTDF pursuant to KRS 230.400. [(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 licensed 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]~~

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

~~(3) [(4)]~~ If at the close of a live race meet, a licensed ~~[an]~~ association has a surplus balance of KTDF monies earned pursuant to KRS 230.400~~[for that meet that has not been distributed in actual KTDF purse distribution]~~, then the licensed association may request to distribute a portion of that balance ~~[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 to:

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

(b) Fund supplemental purse structures approved by the commission for a previous live racing meet held by the licensed association to the recipients of the original purse allocation; or [~~Use KTDF monies previously earned to supplement purses already distributed at the last live racing meet held by the licensed association to the recipients of the original purse allocations.~~]

(c) Supplement purses at another licensed thoroughbred Kentucky racetrack.

~~[(5) If at the close of a live race meet, a licensed [an] association offering wagering on historical horse races has a surplus balance of KTDF monies earned from historical horse race wagers that has not been distributed in actual KTDF purse distribution, then the licensed 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 licensed association;~~

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

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

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

(5) [(7)] A licensed [An] association, at its option, may pay reasonable advertising charges billed to the association by the KTOB from the association's KTDF available balance, provided the advertising charges are consistent with the intent of the KTDF. Approval of any advertising payment shall be subject to the recommendation of the KTDF Advisory Committee and the approval of the commission.

(6) [(8)] (a) Each licensed association shall submit their purses paid reports, advertising invoices, or any other documentation requested by the commission, pertinent to reimbursement, within fifteen (15) calendar days after the last day of a live race meet.

(b) Each licensed association shall sign an acknowledgment [agreement] from the commission stating that it accepts and agrees with the reconciliation prior to the reimbursement of any KTDF funds.

Section 4. Purse Structure. Each licensed 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 to approve the proposed purse structure based upon the best interests of Kentucky racing.

810 KAR 7:030
READ AND APPROVED:

Jonathan Rabinowitz / on my permission

05/10/2023

Jonathan Rabinowitz

Date

Chairman, Kentucky Horse Racing Commission

Ray Perry

5-10-23

Ray Perry

Date

Secretary, Public Protection Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held at 9:00 AM on July 21 2023 at 4063 Iron Works Parkway, Building B, Lexington, KY 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays 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 canceled. 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 PM on July 31, 2023. 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: Jennifer Wolsing

Title: General Counsel

Address: 4063 Iron Works Parkway, Building B, Lexington, KY 40511

Phone: +1 (859) 246-2040

Fax: +1 (859) 246-2039

Email: jennifer.wolsing@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 810 KAR 7:030
Contact Person: Jennifer Wolsing
Phone: +1 (859) 246-2040
Email: jennifer.wolsing@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards 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.

(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: The main proposed changes to this regulation are as follows:

(1) Removes obsolete definitions and adds new definitions, including for "licensed association" and "KTDF Advisory Committee."

(2) Removes obsolete or duplicative language. This ensures that the regulation is consistent with its enabling statute, KRS 230.400.

(3) Amends the regulation such that surplus money from live racing and from historical horse races can be treated the same way by the licensed associations. Added language notes money shall be allocated to the credit of each licensed association in the amount the licensed association contributed to the KTDF.

(4) Adds language that a licensed association may pay reasonable advertising charges from its available KTDF balance provided the advertising charges are consistent with the intent of the KTDF and approval of any advertising payment shall be subject to the recommendation of the KTDF Advisory Committee and the approval of the commission.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure statutory compliance, remove unnecessary or obsolete language, add language to explain KTDF money allocation, and add clarifying language regarding the use of KTDF money to pay advertising charges.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.400 requires the Kentucky Horse Racing Commission promulgate administrative regulations as may be necessary to carry out the provisions and purposes of the KTDF. This amendment and regulation fulfill that statutory mandate.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist the effective administration of the KTDF as statutorily required.

(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, and state and local payroll tax generated by the above businesses.

(4) Provide an analysis of how the entities identified in the previous question 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 each of the regulated entities have to take to comply with this regulation or amendment: The entities identified in (3) will not acquire additional responsibilities.

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

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, the entities identified in (3) will receive direct and indirect benefits of a stronger racing and breeding industry in Kentucky.

(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 taxes 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 established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

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

FISCAL NOTE

Regulation: 810 KAR 7:030
Contact Person: Jennifer Wolsing
Phone: +1 (859) 246-2040
Email: jennifer.wolsing@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 230.400(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. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(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 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.

(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.

(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.

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This regulation is not anticipated to generate cost savings in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This regulation is not anticipated to generate cost savings in subsequent years.

(c) How much will it cost the regulated entities for the first year? This regulation is not anticipated to generate new costs in the first year.

(d) How much will it cost the regulated entities for subsequent years? This regulation is not anticipated to generate additional costs in subsequent years.

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

Cost Savings (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. *"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)].* The KHRC does not anticipate a major economic impact, as set forth in the answers to the questions above.