

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

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. This administrative regulation establishes the procedures for administrative hearings and appeals held pursuant to KRS Chapter 230 and establishes parameters for frivolous appeals.

Section 1. Public Disclosures.

(1) The commission or its executive director may publicly disclose information regarding an alleged regulatory violation if such information will not unduly impact any investigation.

(a) After notice to the racing participant, the commission or its executive director may publicly disclose the identity of any racing participant who is accused of an alleged regulatory violation and the identity of the horse at issue;

(b) After both the commission and racing participant receive testing results pursuant to 810 KAR 8:010 and 810 KAR 8:060, the commission or its executive director may publicly disclose the alleged conduct or the alleged amount and type of the medication, drug, or substance that gave rise to the alleged regulatory violation; or

(c) At any time, the commission or its executive director may publicly disclose the date of an upcoming stewards' hearing; or

(d) At any time, the commission or its executive director may publicly disclose other information in the best interests of racing.

(2) Situations giving rise to the disclosure of information by the commission or its executive director may include the following:

(a) Information pertaining to an alleged regulatory violation has been previously publicly disclosed by the racing participant or any employee or agent of the racing participant;

(b) In the case of an alleged medication violation, if the commission's laboratory has returned a positive finding and the racing participant has been notified of the results of the split sample pursuant to 810 KAR 8:010;

(c) In the case of an alleged medication violation, if the commission's laboratory has returned a positive finding and the racing participant has not exercised his or her right to further laboratory testing; or

(d) For other reasons in the best interests of racing.

Section 2. 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. A stewards' or judges' hearing shall be conducted no more than sixty (60) days after either:

- (a) the racing participant is notified of an alleged violation, or
- (b) if the racing participant requests split laboratory results, the date on which the participant receives those results.

(2) The stewards or judges may extend the sixty (60) day deadline in their sole discretion, upon demonstration of exigent circumstances.

~~(3) {(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.

~~(4) {(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.

~~(5) {(4)}~~ Public attendance at stewards' and judges' hearings is allowed. Nothing in this section limits the authority of the presiding stewards or judges to order closure of a hearing or to make other protective orders to the extent necessary or proper to satisfy the United States Constitution, the Kentucky Constitution, federal or state statute, or other law, such as laws protecting privileged, confidential, or other protected information.
~~{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.}~~

~~(6) {(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.

~~(7) {(6)}~~ Testimony shall be given under oath and a record shall be kept 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 race replay.

~~(8) {(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.

~~(9) {(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 Standardbred racing, to the United States Trotting Association.

~~(10) {(9)}~~ A party who is the subject of an 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 a horse or horses in a race shall be disqualified for fouls committed during the race; or
- (b) Findings of fact as to matters occurring during and incident to the running of a race.

(11) ~~[(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.

(12) ~~[(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 3. ~~[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 4. ~~[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 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 5. ~~[Section 4.]~~ Appeal from Commission Order. A person or licensee aggrieved by an order or decision of the commission may appeal to the Franklin Circuit Court in accordance with KRS 230.330.

Section 6. ~~[Section 5.]~~ Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) The "Notice of Appeal", KHRC 9-010-1, 11/2018; and
 - (b) The "Request for Stay Pending Appeal", KHRC 9-010-2, 11/2018.
- (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>.

JONATHAN RABINOWITZ, Chairman

RAY PERRY, Secretary

APPROVED BY AGENCY: May 5, 2022

FILED WITH LRC: May 11, 2022 at 2:00 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on July 22, 2022 at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 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 p.m. on July 31, 2022. 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, General Counsel, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone +1 (859) 246-2040, fax +1 (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation sets forth procedures for the commission to conduct stewards' and judges' hearings, and the appropriate procedure for appeals from those hearings.

(b) The necessity of this administrative regulation:

This regulation is necessary to allow racing participants the right to a stewards' or judges' hearing for alleged violations of the commission's regulations and statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This regulation conforms to the content of KRS 230.320 and 230.370, which explicitly provide for stewards' and judges' hearings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This regulation assists in the effective administration of KRS 230.320 and 230.370, by providing procedures and the explicit right to a stewards' or judges' hearing.

(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:

There are three (3) major proposed changes to this regulation. First, the commission or its executive director will be allowed to publicly disclose information about an alleged violation, if such information will not unduly impact an investigation. Second, a stewards' or judges' hearing shall be conducted no more than 60 days after the notification of a violation or the receipt of split laboratory results, if requested. The stewards or judges may extend that date upon demonstration of exigent circumstances. Third, public attendance will be allowed at stewards' or judges' hearings.

(b) The necessity of the amendment to this administrative regulation:

This proposed amendment is necessary to improve transparency, in accordance with the national and international trends.

(c) How the amendment conforms to the content of the authorizing statutes:

KRS 230.320 and 230.370 explicitly authorize stewards' and judges' hearings. This amendment conforms to the content of the authorizing statutes by improving the procedures associated with stewards' and judges' hearings.

(d) How the amendment will assist in the effective administration of the statutes:

This amendment assists in the effective administration of the authorizing statutes by making stewards' and judges' hearings more transparent.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

The Kentucky Horse Racing Commission is affected by this administrative regulation. In addition, Kentucky's licensed thoroughbred and standardbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of transparent procedures regarding stewards' and judges'

hearings and the investigations of regulation or statute violations. In 2017, the commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to year.

(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 regulated entities will have to take no new steps to comply with this proposed amendment. The commission will take all steps necessary to ensure transparent investigations and hearings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

No new costs are anticipated to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Participants in racing will benefit from clearly defined rules that enhance the integrity of racing. In addition, racing participants will benefit from more transparency associated with investigations and hearings.

(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:

The Kentucky Horse Racing Commission covers the costs of administering and enforcing this regulation.

(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 are 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 increases any current fees to participate.

(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

(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 230.320 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.

(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 governments for the first year.

(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 governments for subsequent years.

(c) How much will it cost to administer this program for the first year?

No funds 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 funds will be required to administer this regulation for 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?

Costs will not be affected by this amendment.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

Costs will not be affected by this amendment.

(c) How much will it cost the regulated entities for the first year?

No costs are associated with this amendment in the first year.

(d) How much will it cost the regulated entities for subsequent years?

No costs are associated with this amendment 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 (+/-):neutral.

Expenditures (+/-):neutral.

Other Explanation:

none.

(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)]. This amendment will not have a major economic impact, as defined above.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

No federal mandate is associated with this amendment.

(2) State compliance standards.

N/A.

(3) Minimum or uniform standards contained in the federal mandate.

N/A.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

N/A.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

N/A.