



**STATEMENT OF CONSIDERATION  
RELATING TO 810 KAR 1:070  
PUBLIC PROTECTION CABINET  
KENTUCKY HORSE RACING COMMISSION**

**810 KAR 1:070 NOT AMENDED AFTER COMMENTS**

I. A public hearing on amendments to 810 KAR 1:070 (Kentucky Thoroughbred Breeders' Incentive Fund) was held on July 27, 2011 at 10:00 a.m. at the offices of the Kentucky Horse Racing Commission located at 4063 Iron Works Pkwy, Building B, Lexington, Kentucky 40511.

II. The following individuals spoke at the public hearing and/or submitted written comments:

Name	Association
Lajuana Wilcher	Independent Owner/Breeder
Ben Walden	Independent Owner/Breeder

III. The following individuals from the Kentucky Horse Racing Commission ("KHRC") attended the hearing:

Name	Title
Timothy A. West	Assistant General Counsel

IV. **Summary of Comments and Responses**

(1) **Subject Matter:** Clarification of the filing deadlines for the registration of unborn foals to the Kentucky thoroughbred breeders' incentive fund.

**Commenters:** Lajuana Wilcher, Ben Walden

(a) **Comment:** The KHRC amended 810 KAR 1:070 to change the nomination deadline for the Kentucky Thoroughbred Breeders' Incentive Fund (the "KBIF") program from August 1<sup>st</sup> to August 15<sup>th</sup>. Because the amended regulation does not state to which year the changes will apply, the change should be made applicable to the 2010 calendar year. Doing so will

further the objectives of the KBIF by allowing additional breeders to participate who missed the deadline in 2010 but will not prejudice those breeders who are already registered because the nominated foals have not begun racing and, therefore, have not earned any incentive awards.

**(b) Response:** Administrative regulations are presumed to be prospective in application. *Todd v. United Parcel Service*, 1998 WL 34077712 (W.D.Ky.), citing *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208 (1988). The *Bowen* court further stated,

Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result .... By the same principle, a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress .... Even where some substantial justification for retroactive rulemaking is presented, courts should be reluctant to find such authority absent an express statutory grant.

*Bowen*, 488 U.S. at 208.

KRS 230.800 establishes the KBIF. With respect to the KHRC's authority to promulgate administrative regulations, that statute states that, "[T]he Kentucky Horse Racing Commission shall promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund." Obviously, there is no express grant of authority to promulgate administrative regulations with retroactive effect. Because there is no express grant of authority, the KHRC cannot give retroactive effect to amendments to the KBIF regulation.

#### **V. Action taken by Promulgating Administrative Body**

No changes were made to 810 KAR 1:070 as a result of the verbal and written comments received by the KHRC during the public comment period.