

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

(1) Agency

Pennsylvania State Horse Racing Commission

(2) I.D. Number (Governor's Office Use)

34-65

IRRC Number:

2536

(3) Short Title

Rules of Racing - Pennsylvania Breeders' Fund Program

(4) PA Code Cite

58 Pa. Code Chapter 163

(5) Agency Contacts & Telephone Numbers

Primary Contact: Benjamin H. Nolt, Jr. (717) 346-9643

Secondary Contact: Michael Dillon (717) 787-8744

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The Pennsylvania Breeding Fund Program (Program) is established under the Act, and provides for the awarding of financial incentives to: (1) breeders of Pennsylvania-bred thoroughbred horses sired either by a registered Pennsylvania sire or a non-registered sire; (2) owners of registered Pennsylvania sires; and (3) licensed owners of registered Pennsylvania-bred thoroughbred horses.;

The regulation would: (1) revise and clarify several definitions relating to the Program; and (2) meet the statutory requirement that the Pennsylvania State Horse Racing Commission (Commission) promulgate a regulation providing for Program awards.

Proposed § 163.531 (relating to definitions) would clarify the definitions of "Pennsylvania-bred horse" and "Pennsylvania sire," and add definitions for commonly-used terms. Proposed § 163.538 (relating to purses and awards) repeats the award requirements set forth in § 223(b) of the Act.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The Race Horse Industry Reform Act (act of December 17, 1981, P.L. 435, No. 135, 4 P.S. §§ 325.101 – 325.402) (Act) provides the general legal authority for the regulation.

Section 202 of the Act (4 P.S. § 325.202) provides the Commission authority to adopt rules and regulations necessary to its supervision of thoroughbred horse race meetings; and § 223(b) of the Act (4 P.S. § 325.223(b)) requires the Commission to promulgate regulations describing awards under the Program.

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. The subject matter of proposed § 163.538 is required by statute to be the subject of a regulation. Section 223(b) of the Act (4 P.S. § 325.223(b)) requires the Commission to promulgate regulations describing awards under the Program.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

There is approximately \$8.2 million in the Pennsylvania Breeding Fund (Fund); and this amount is expected to increase significantly once slot machines are installed at the racetracks. The Program uses money from the Fund to provide financial incentives intended to keep Pennsylvania's thoroughbred race horse breeding industry vital.

The proposed regulation would clarify definitions and meet the statutory requirement that the Program's award structure be formalized by regulation.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no such risks associated with regulation or nonregulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

There are approximately 625 persons who have mares, stallions or foals that are currently registered with the Pennsylvania Horse Breeders' Association (PHBA). These are the persons who would ultimately benefit from the clarification the proposed regulation would accomplish.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No persons would be adversely affected by the regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The persons who must comply with the regulation if they wish to participate in the Program (Program participation is entirely *voluntary*) and their estimated numbers are as follows:

Pennsylvania's thoroughbred breeders - 625.

Owners of thoroughbred sires standing in Pennsylvania - 100.

Owners of Pennsylvania-bred horses - 725 .

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Commission and the PHBA have worked together closely in the development and drafting of the proposed regulation.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The proposed regulation would is not expected to result in any costs or savings with respect to the regulated community.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

No such costs or savings are anticipated.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

No such costs or savings are anticipated.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
COSTS:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

(20a) Explain how the cost estimates listed above were derived.

The proposed regulation would not result in costs or savings – it would simply refine several definitions and restate – in regulation – an award formula that is already stated in the Act.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3 2002	FY-2 2003	FY-1 2004	Current FY 2005
Pennsylvania Breeding Fund Program	\$9,384,298	\$8,908,909	\$8,076,228	\$7,173,154 (partial figure)

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The proposed regulation is not expected to impose costs on any entity, so the benefits to be realized from the clarification this regulation outweigh any costs.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No non-regulatory alternatives were considered, because the regulation is intended to amend a current regulation and add a regulatory provision that is specifically required by the act.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory schemes were considered.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No. There are no applicable Federal standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Breeding fund programs in surrounding states operate under very similar regulations. The revised regulation § 163.531 and the additional regulation at § 163.538 will not put Pennsylvania at any competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

None.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The proposed regulation would take effect upon final promulgation. No permits, licenses or other approvals are required with respect to this proposed regulation.

(31) Provide the schedule for continual review of the regulation.

The efficacy of the regulation would be reviewed on an ongoing basis.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU

(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY
REVIEW COMMISSION

2536

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality.
Attorney General

[Signature]

By: (Deputy Attorney General)

APR 17 2006
DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and
correct copy of a document issued, prescribed or
promulgated by:

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 34-65

DATE OF ADOPTION 2-7-06

BY *[Signature]*
BENJAMIN H. NOLT, Jr.

TITLE
EXECUTIVE SECRETARY
Pennsylvania State Horse Racing Commission

Copy below is hereby approved as to form and legality
Executive or Independent Agencies

[Signature]

BY ANDREW C. CLARK
MAR 27 2006
DATE OF APPROVAL

(Deputy General Counsel)
(~~Chief Counsel - Independent Agency~~)
(Strike inapplicable title)

Check if applicable. No Attorney General Approval
or objection within 30 days after submission.

Notice of Proposed Rulemaking

Title 58 - RECREATION

58 Pa. Code PART IV. Horse Racing Commission, Chapter 163, Rules of Racing.

Pennsylvania Breeders' Fund Program

§ 163.531. Definitions

PROPOSED RULEMAKING

STATE HORSE RACING COMMISSION

RULES OF RACING
[58 PA. CODE CH. 163]

The State Horse Racing Commission (Commission) proposes to amend the current regulation at 58 Pa. Code Chapter 163 (relating to rules of racing), to read as set forth in Annex "A."

Statutory Authority

The Race Horse Industry Reform Act (act of December 17, 1981, P.L. 435, No. 135, 4 P.S. §§ 325.101 – 325.402) (Act) provides the general legal authority for the regulation.

Section 202 of the Act (4 P.S. § 325.202) provides the Commission authority to adopt rules and regulations necessary to its supervision of thoroughbred horse race meetings; and § 223(b) of the Act (4 P.S. § 325.223(b)) requires the Commission to promulgate regulations describing awards under the Pennsylvania Breeding Fund Program (Program).

Purpose of the Regulation

The regulation would: (1) revise and clarify several definitions relating to the Program; and (2) meet the statutory requirement that the Commission promulgate a regulation providing for Program awards.

Background

The Pennsylvania Breeding Fund (Fund) is intended to stimulate and sustain the Commonwealth's thoroughbred breeding industry. The Fund currently receives an amount equivalent to one percent of the dollar amount wagered each day on thoroughbred horses at Pennsylvania facilities conducting pari-mutuel wagering. The Fund is a restricted account in the State Racing Fund, and helps support live thoroughbred racing for a series of incentive award payments to: (1) breeders of Pennsylvania-bred thoroughbred horses sired either by a registered Pennsylvania sire or a non-registered sire; (2) owners of registered Pennsylvania sires; and (3) licensed owners of registered Pennsylvania-bred thoroughbred horses. The Act has, since 1981, provided a clear description of how awards are to be calculated and distributed, but also required that the Commission address this subject in regulation.

The Pennsylvania Horse Breeders' Association (PHBA) retains records relevant to the Commission's administration of the Program, and performs other functions described in § 223 of the Act.

Overview of the Proposed Regulation

Proposed § 163.531 (relating to definitions) would clarify the definitions of “Pennsylvania-bred horse” and “Pennsylvania sire,” and add definitions for commonly-used terms.

Proposed § 163.538 (relating to purses and awards) repeats the award requirements set forth in § 223(b) of the Act.

The Commission is satisfied that there are no reasonable alternatives to proceeding with the regulation. The Commission is also satisfied that the proposed regulation meets the requirements of Executive Order No. 1996-1 “Regulatory Review and Promulgation.”

Affected Individuals and Organizations

There are approximately 625 persons who have foals or stallions that are currently registered with the PHBA. These are the persons who would be affected by the regulation. The number of currently-registered foals and stallions is approximately 1,100. Since the number of affected persons would not be appreciably changed by the proposed regulation, and the requirements of the Program would not be substantively altered by the proposed regulation, the Commission does not expect there to be an appreciable adverse impact on the affected community.

Fiscal Impact

The proposed regulation will impose no additional costs and have no fiscal impact upon the Commonwealth, the public sector, or the general public.

Paperwork Requirements

The proposed regulation will result in no additional paperwork for the Commission.

Effective Date

The proposed regulation will take effect upon publication in the *Pennsylvania Bulletin* as a final-form regulation.

Public Comments and Contact Person

Interested persons are invited to submit written comments regarding the proposed regulation to Benjamin H. Nolt, Jr., Executive Secretary, State Horse Racing Commission, Room 304, Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17110, (717) 346-9643 within thirty calendar days after the date of publication of this proposed regulation in the *Pennsylvania Bulletin*.

Regulatory Review

Under § 5(a) of the Regulator Review Act (71 P. S. §745.5 (a)), on April 24, 2006 the State Horse Racing Commission submitted a copy of this proposed regulation to the Independent Regulatory Review Commission (IRRC). On that same date the State Horse Racing Commission submitted a copy to the Chairpersons of the House State Government Committee and the Senate State Government Committee. The State Horse Racing Commission also provided IRRC and the Committees a detailed Regulatory Analysis Form prepared by the State Horse Racing Commission. A copy of this material is available to the public upon request.

In accordance with section 5(g) of the Regulatory Review Act (71 P. S. §745.5(g)), if IRRC has comments, recommendations or objections regarding any portion of the proposed regulation, it must so notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act sets forth detailed procedures for review of these objections by the State Horse Racing Commission, the General Assembly and the Governor prior to the final publication of the proposed regulation.

BENJAMIN H. NOLT, JR.
Executive Secretary

Annex "A"

STATE HORSE RACING COMMISSION
[58 PA. CODE]
CHAPTER 163. RULES OF RACING

* * * * *

PENNSYLVANIA BREEDERS' FUND PROGRAM

§ 163.531. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

Fund—The Pennsylvania Breeding Fund as created by § 223 of the Act (4 P.S. § 325.223).

Breeder—[A breeder is the] The owner of the dam at the time of foaling, and indicated as such on the certificate of registration issued by the Jockey Club.

[When a horse is held under a lease or partnership registered with the jockey club, the lease or partnership will be deemed to be the owner.]

Pennsylvania-bred horse—[A Pennsylvania-Bred horse is a thoroughbred horse foaled in this Commonwealth, which during the year of foaling, the foal or its dam spent a minimum of 90 days at a facility in this Commonwealth and is subsequently registered with the Pennsylvania Horse Breeders Association and the Jockey Club.]: A thoroughbred horse with respect to which all of the following are accurate:

(i) The horse was foaled in the Commonwealth of Pennsylvania.

(ii) The horse is the subject of a current certificate of registration issued by the Jockey Club.

(iii) The horse meets the registration eligibility qualifications for participation in the Pennsylvania Breeding Fund program as determined by the Pennsylvania Horse Breeders Association.

(iv) The horse is registered with the Pennsylvania Horse Breeders Association in accordance with § 163.535 (relating to records of registration).

Pennsylvania sire—[A Pennsylvania sire is a thoroughbred stallion that regularly stands for a breeding season in this Commonwealth and is registered with the Pennsylvania Horse Breeders Association.] A thoroughbred stallion with respect to which all of the following are accurate:

(i) The horse regularly stands in Pennsylvania.

(ii) The horse meets the registration eligibility qualifications for participation in the Pennsylvania Breeding Fund program as determined by the Pennsylvania Horse Breeders Association.

(iii) The horse is registered with the Pennsylvania Horse Breeders Association in accordance with § 163.535; and is so registered each year the stallion stands in Pennsylvania.

The Jockey Club – The breed registry organization for all thoroughbred horses in North America, having responsibility for maintaining the American Stud Book, which includes all thoroughbreds foaled in the United States, Canada, and Puerto Rico, as well as thoroughbreds imported into those countries from other countries that maintain similar thoroughbred registries.

* * * * *

§ 163.538. Purses and awards.

(a) A prize awarded under this section shall be in accordance with the standards for purses at each racing meet as approved by order of the Commission. Each prize shall be advanced to the Horsemen's Bookkeeper Account as won or earned at each meet by the racing association conducting the meet. The racing association shall maintain a separate ledger of them and shall transmit a certified copy of allowances, prizes and purses made no later than every 10th day of each month of the meets to the Commission. After the Commission has reviewed and approved them, it shall reimburse the racing association for the advances made which the Commission finds proper.

(b) The Pennsylvania Breeders Association shall compile awards earned by breeders, [and] owners of Pennsylvania sires and owners of Pennsylvania-bred horses and maintain a separate ledger of them. Monthly, a certified report of awards earned shall be forwarded to the Commission. After the Commission has reviewed and approved them it will be forwarded to the Department of Treasury for payment to the awardees.

(b.1) Awards shall be provided for as follows:

(1) Awards to breeders. An award of 30% of the purse earned by every registered Pennsylvania-bred thoroughbred horse sired by a registered Pennsylvania sire at the time of conception of the registered Pennsylvania-bred thoroughbred horse, or an award of 20% of the purse earned by every registered Pennsylvania-bred thoroughbred horse sired by a non-registered sire, which finishes first, second or third in any race conducted by a licensed corporation

under the Act shall be paid to the breeder of said registered Pennsylvania-bred thoroughbred horse. A single award under this paragraph may not exceed 1% of the total annual Fund money.

(2) Awards to owners of registered Pennsylvania sires. An award of 10% of the purse earned by any Pennsylvania-bred thoroughbred horse which finishes first, second or third in any race conducted by a licensed corporation under the Act shall be paid to the owner of the registered Pennsylvania sire which regularly stood in Pennsylvania at the time of conception of said Pennsylvania-bred thoroughbred horse. A single award under this paragraph may not exceed .5% of the total annual Fund money.

(3) Awards to owners of Pennsylvania-bred horses. An award of 10% of the purse earned by any registered Pennsylvania-bred thoroughbred horse which finishes first in any race conducted by a licensed corporation under the Act not restricting entry to registered Pennsylvania-bred thoroughbred horses shall be paid to the licensed owner of said registered Pennsylvania-bred thoroughbred horse at the time of winning. A single award under this paragraph may not exceed .5% of the total annual Fund money.

(c) A person interested in the awards, allowances, prizes and purses and objecting to calculations or determinations thereof as shown on the records of the racing association, the Pennsylvania Breeders Association and the horsemen's bookkeeper, shall be responsible for taking written appeals to the Commission in the manner provided for appeals from decisions of the association pertaining to registrations.

(d) The Commission will have the right to review and approve fees and charges imposed by the Breeders Association for a program. The charge or fee may not be imposed without prior approval by the Commission.

(e) Records, funds and accounts of funds, prizes, purses, allowances and awards under this program shall be maintained separate from other records, funds and accounts and may not become mingled with other matters. The records, funds and accounts shall be kept continuously open for inspection by the Commission.

COMMONWEALTH OF PENNSYLVANIA



GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF AGRICULTURE
2301 N. Cameron Street • Room 201
Harrisburg, Pennsylvania 17110-9408

OFFICE OF CHIEF COUNSEL

Tel: 717-787-8744
Fax: 717-787-1270

April 24, 2006

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17120

RE: NOTICE OF PROPOSED REGULATION
State Horse Racing Commission
58 Pa. Code Chapter 163
Rules of Racing – PA Breeders' Fund Program
I.D. No. 34-65

Dear Sir or Madam:

Please find enclosed a copy of the above-referenced notice of proposed rulemaking (Preamble and Annex "A"), together with a copy of the appropriate Regulatory Analysis Form. This material was delivered to the Legislative Reference Bureau on this date, and the notice of proposed rulemaking will be published in the **May 6, 2006** edition of the *Pennsylvania Bulletin*. The public comment period with respect to this notice of proposed rulemaking will expire **June 5, 2006**.

The enclosed material is submitted to you in accordance with the requirements of § 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)). Section 5(d) of the Regulatory Review Act (71 P.S. § 745.5(d)) provides that the standing committees may at any time prior to the submittal of the regulation in final form, convey to the State Horse Racing Commission and the Independent Regulatory Review Commission their comments, recommendations and objections to the proposed regulation and a copy of any staff reports deemed pertinent.

The State Horse Racing Commission will provide you with any assistance you require to facilitate a thorough review of this proposed regulation.

Sincerely,

A handwritten signature in black ink that reads "Michael A. Dillon".

Michael A. Dillon
Assistant Counsel

Enclosures

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**




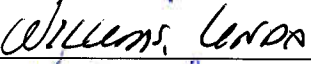


I.D. NUMBER: #34-65
 SUBJECT: Rules of Racing – PA Breeders’ Fund Program
 AGENCY: PA STATE HORSE RACING COMMISSION

TYPE OF REGULATION

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

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 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
4-24-06		CLYMER HOUSE STATE GOVERNMENT COMMITTEE
4-24-06		JOSEPHS
4-24-06		LEMMOND SENATE STATE GOVERNMENT COMMITTEE
4-24-06		WILLIAMS
4-24-06		INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
4-24-06		LEGISLATIVE REFERENCE BUREAU (for Proposed Only)