PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

810 KAR 7:050. Kentucky Horse Breeders' Incentive Fund.

RELATES TO: KRS 230.225(5)(c), 230.330, 230.804, 15 U.S.C. 1821-1831
STATUTORY AUTHORITY: KRS 230.804(2)(b)
NECESSITY, FUNCTION, AND CONFORMITY: KRS. 230.804 establishes the Kentucky Horse Breeders' Incentive Fund. KRS 230.804(2)(b) requires the Kentucky Horse Racing Commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, and the procedures for paying incentive awards from the fund.

Section 1. Definitions.
(1) "Applicant" means a Kentucky affiliate representing a breed of horses which is eligible to register with the commission to participate in the Kentucky Horse Breeders' Incentive Fund.
(2) "Award distribution plan" means a plan submitted by a Kentucky affiliate to the commission outlining the procedures by which the Kentucky affiliate will award funds from the Kentucky Horse Breeders' Incentive Fund to incentive winners who are members of the Kentucky affiliate.
(3) "Breed" means a subspecies of horse with particular physical characteristics common to the subspecies which are used in establishing the identity of a horse by a registry recognized by the commission.
(4) "Breeder" means:
(a) A person or persons engaged in the breeding of horses eligible for the Kentucky Horse Breeders' Incentive Fund, as defined by the national association of the Kentucky affiliate recognized by the commission as a participant in the Kentucky Horse Breeders' Incentive Fund program; or
(b) If the national association does not define "breeder", the owner of the dam of a horse when the horse was foaled.
(5) "Closed breed registry" means the restrictions of the official national breed registry recognized by the Kentucky Horse Breeders' Incentive Fund.
(6) "Contest" means a competitive event with an outcome which qualifies the owner of a horse as an incentive winner under a Kentucky affiliate's award distribution plan.
(7) "Incentive winner" means a person whose horse's performance in a contest entitles that person to an award from the Kentucky Horse Breeders' Incentive Fund.
(8) "Kentucky affiliate" means the Kentucky organization that is recognized by a national breed organization representing that particular breed of horse in Kentucky.
(9) "Kentucky Horse Breeders' Incentive Fund" means the trust and revolving fund established by KRS 230.804.
(10) "KHBIF" means the Kentucky Horse Breeders' Incentive Fund.
(11) "Show horse" means a horse that participates in judged exhibition competitions.

Section 2. Registration of Kentucky Affiliate.
(1) Only a Kentucky affiliate may register to participate in the KHBIF.
(2) Kentucky affiliates shall have an Internal Revenue Service 501(c) designation.
(3) To become eligible to receive funds from the KHBIF, a Kentucky affiliate shall register with the commission by:
(a) Filing an "Application for Registration of Kentucky Affiliate with the Kentucky Horse Breeders' Incentive Fund", KHRC Form HB-1, (12/08); and

(b) Filing with the application an award distribution plan to be reviewed and approved by the commission.

(4) A thoroughbred breed shall not be eligible for registration with the KHBIF, unless the thoroughbred breed consists exclusively of show horses.

(5) A standardbred breed shall not be eligible for registration with the KHBIF, unless the standardbred breed consists exclusively of show horses.

(6) The color of a breed of horses shall not be the sole criterion used to define that breed for purposes of registration with the KHBIF.

(7) The commission may establish, under its general jurisdiction, the KHBIF Advisory Committee (the "advisory committee"). If established, the advisory committee shall consist of three (3) members appointed by the chairman of the commission by July 1 of each year. One (1) member shall be recommended to the chairman for appointment by the Kentucky Equine Education Project (KEEP). If KEEP has not recommended a member for appointment by July 1 of a given year, the Chairman of the commission shall make the appointment without the recommendation. At least one (1) member of the advisory committee shall have established knowledge of gaited horses. Each member of the advisory committee shall serve from July 1 through June 30 of the following year. Each member of the advisory committee shall be a resident of Kentucky. Each member of the advisory committee shall serve without compensation, but shall be entitled to reimbursement for all reasonable expenses incurred in the discharge of official business. The advisory committee shall select a chairman from its membership annually.

(8)

(a) The advisory committee shall advise and assist the commission in the registration process described in this section. The advisory committee shall make a recommendation of approval or denial to the commission for each applicant based upon the application and compliance with the requirements established in subsection (13) of this section.

(b) The commission shall employ qualified personnel necessary to assist the commission and the advisory committee in carrying out the provisions of this administrative regulation. These personnel shall serve at the pleasure of the commission, and compensation for these personnel shall be fixed by the commission.

(9) After the advisory committee recommends to the commission the approval or denial of an application, the commission shall consider the recommendation and whether or not the requirements of this administrative regulation have been met, and shall:

(a) Approve the application;

(b) Deny the application; or

(c) Defer consideration of the application for a reasonable time for the purpose of conducting further investigation of the application.

(10) Registration shall be effective for three (3) years. The first three (3) year registration period shall consist of the period beginning January 1, 2022, and ending December 31, 2024.

(11) For the first registration period, a Kentucky affiliate shall register with the commission on or prior to November 1, 2021. Any Kentucky affiliate that registered with the commission under any previously effective version of this administrative regulation shall reregister.

(12) For each three (3) year period beginning on or after January 1, 2022, a Kentucky affiliate shall register with the commission on or prior to November 1 of the calendar year immediately preceding January 1 of the first year of the three (3) year registration period.

(13) A Kentucky affiliate shall have until December 31 following the November 1 deadline established in subsections (11) and (12) of this section to revise and update any information previously provided to the commission on or before the November 1 deadline.

(14) The application and the accompanying award distribution plan provided to the commission shall include the following information:

(a) The name of the breed of horse covered by the plan;

(b) The name of the Kentucky affiliate;

(c) A letter from the national breed organization representing the breed certifying that the Kentucky affiliate is the recognized representative in Kentucky of that breed, and certifying the number of horses twenty-five (25) years of age and younger in the breed residing in Kentucky. If the Kentucky affiliate is the national breed organization, then an independent third party approved by the commission shall certify the number of horses. Optionally, if the Kentucky affiliate demonstrates to the commission that it is unable to obtain an independent third party to certify horse numbers as required in this subsection, the commission may certify horse numbers at a fee of $120 per hour.

1. For a horse to be included in the certification, the horse shall be the result of parentage verified by DNA verification of either the horse's sire or dam. A three (3) generation pedigree on one (1) side shall be displayed on the certificate of registration, so that the horse, at least one (1) of the horse's parents, and at least (1) set of the horse's grandparents are displayed on the certificate.

2. Each horse shall receive claim money from~~[be registered with]~~ only one (1) Kentucky affiliate per year.

3. The affiliate shall provide the data electronically to the commission and in a format agreeable to the commission;

(d) A letter from the national breed organization representing the breed certifying that the breed has a closed breed registry; and

(e) The award distribution plan pursuant to which awards will be distributed to KHBIF incentive winners who are breeders or owners of horses bred and foaled in Kentucky. The award distribution plan shall specify:

1. The scoring method or point system to be utilized in contests to determine the incentive winner of each contest as certified by the national breed organization;

2. The identity of the scoring person or body that will judge each contest as certified by the national breed organization;

3. The rules of the contests in which the horses of the breed will participate as certified by the national breed organization; and

4. The percentage distribution formula by which the Kentucky affiliate shall grant awards to incentive winners.

(15)

(a) The commission shall be recognized and designated as the sole official registrar of the KHBIF for the purposes of registering the application and award distribution plan for each breed in accordance with the terms of this administrative regulation.

(b) The records of each national breed organization shall be used as the official records of the commission for determining the following information:

1. The identity of the Kentucky affiliate representing the breed in Kentucky; and

2. The number of horses of the breed twenty-five (25) years of age and younger registered with the national breed organization and currently residing in Kentucky.

(16) If the information on an application form required under this section is found to be inaccurate, or becomes inaccurate, or changes, the organization identified as the Kentucky affiliate shall promptly notify the commission of the correct information within thirty (30) days of discovering the inaccuracy or the circumstances causing the information to become inaccurate or to change.

Section 3. Timing and Distribution of Awards.

(1) The events eligible for awards from the KHBIF, as set forth in each award distribution plan, shall be those occurring on or after January 1, 2006.

(2) Awards to incentive winners shall be calculated and distributed each year.
(3) The commission, with the cooperation of each Kentucky affiliate shall, after the end of each calendar year, calculate the funds due to each Kentucky affiliate for that year.
(4) The amount allocated to a Kentucky affiliate participating in the KHBIF shall be calculated by:

(a) Dividing the number of horses of the breed twenty-five (25) years of age and younger and currently residing in Kentucky as certified by the national breed organization pursuant to Section 2(14)(c) of this administrative regulation, by the total number of horses from all Kentucky affiliates certified pursuant to Section 2(14)(c) of this administrative regulation. The number of horses in each case shall be the number of horses recorded on each Kentucky affiliate's application form on the December 31 deadline established in Section 2(13) of this administrative regulation; and
(b) Multiplying the fraction obtained in paragraph (a) by the total amount of money allocated to all Kentucky affiliates during the year.

(5) An award to an incentive winner from the KHBIF shall be determined based on the award distribution plan submitted by the Kentucky affiliate representing the breed to the commission pursuant to Section 2(2)(b) of this administrative regulation.
(6) The commission shall, by March 1 of each year, notify the Kentucky affiliate of the total dollars allocated to that affiliate.
(7) Kentucky affiliate shall, by October 1 of each year, notify the commission of the names of the incentive winners who are entitled to awards for contests held during the previous year. The Kentucky affiliate shall also, by October 1 of each year, notify the commission of the names of the horses registered to that affiliate, and the date of each horse's registration. If a horse is registered with more than one (1) affiliate, the commission shall not count that horse's award, and the funds for that award shall revert back to the KHBIF to be distributed in future awards.

(a) Within thirty (30) calendar days of receiving the names of the incentive winners from the Kentucky affiliate, the commission shall generate claim forms for the appropriate Kentucky affiliate.
(b) The Kentucky affiliate shall provide the claim forms received from the commission to its incentive winners from the previous year.
(c) The Kentucky affiliate shall provide a letter to the commission, which certifies that it has notified all incentive winners of their awards from the previous year. The commission shall not issue an award check for any of that Kentucky affiliate's incentive winners prior to receiving this letter.

(8) After receiving notification of an award, each incentive winner shall return an enclosed claim form for the award that certifies that the incentive winner is entitled to the award and that certifies the incentive winner's taxpayer ID number or Social Security number. The claim form shall be delivered to the commission no later than December 31 of the same year in which the commission notified the incentive winner of the award pursuant to subsection (7) of this section.
(9) The claim form shall be the form "Claim Form of Incentive Winner for Award from the Kentucky Horse Breeders' Incentive Fund", KHRC Form HB-2, (12/06).
(10) Failure to return the claim form required by subsection (8) of this section by December 31 of the year in which the incentive winner was notified of the award pursuant to subsection (7) of this section shall result in forfeiture of the award, and the award money shall lapse to the KHBIF.
(11) An award from the KHBIF shall not be granted to any incentive winner who is not in good standing with the national breed organization or Kentucky affiliate.

Section 4. Semiannual Reports.

(1) A semiannual status report describing a Kentucky affiliate's progress and participation in the award distribution plan shall be filed with the advisory committee by each Kentucky affiliate on or before July 31 and January 31. If that date is on a Saturday, Sunday, or legal holiday, the report shall be due on the first business day thereafter.

(2) The semiannual report shall also include:

(a) A list of all stallions presently breeding horses eligible to participate in the fund, and the farm locations on which the stallions stand;

(b) A schedule of all state and national contests for that year in which horses eligible to participate in the KHBIF are scheduled to participate;

(c) A list of all horses registered with the Kentucky affiliate and the horse's date of registration with that affiliate;

(d) A current list of the Kentucky affiliate's board members; and

(e) The current contact information of the Kentucky affiliate's preferred contacts.

Section 5. Disputes.

(1) Any dispute between the commission and a Kentucky affiliate or national breed organization arising under this administrative regulation shall be raised by the aggrieved party filing a petition seeking relief with the executive director of the commission, within thirty (30) days of the action or the inaction leading to the dispute, as established in 810 KAR 7:070.

(2) If the executive director and the aggrieved party do not agree on a resolution of the dispute, the executive director shall assign the case to a hearing officer who shall conduct a hearing pursuant to KRS Chapter 13B.

Section 6. Disciplinary Procedures.

(1) Violations, discipline, disputes, and investigation shall take place according to 810 KAR 7:070.

(2) In addition to the procedures established in 810 KAR 7:070, and notwithstanding any contrary provisions of 810 KAR 7:070, the commission may take the following actions, which would be subject to appeal as established in 810 KAR 7:070:

(a) For a violation of 810 KAR 7:070, the commission may bar a Kentucky affiliate or national breed organization from registering for a period of from one (1) to ten (10) years, based on the seriousness of the violation.

(b) For a second or subsequent violation of 810 KAR 7:070, the commission may bar the Kentucky affiliate or national breed organization from eligibility to receive an incentive from the KHBIF for a period of from one (1) to twenty (20) years.

(c) If the evidence available to the commission indicates that an individual who is a member of, or acting on behalf of, a Kentucky affiliate or national breed organization has, without the knowledge or consent of the Kentucky affiliate or national breed organization, violated 810 KAR 7:070, then the commission may condition the continuing registration of the Kentucky affiliate in the KHBIF upon the exclusion of that individual from any further participation in work related to the KHBIF.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Registration of Kentucky Affiliate with the Kentucky Horse Breeders' Incentive Fund", <u>KHRC 7-050-1, (10/2021)</u>~~[KHRC Form HB-1, (12/08)]~~; and

(b) "Claim Form of Incentive Winner for Award from the Kentucky Horse Breeders' Incentive Fund", <u>KHRC 7-050-02, (10/2021)</u>~~[KHRC Form HB-2, (12/08)]~~.

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

(3) This material may also be obtained from the KHRC Web site at www.khrc.ky.gov.

JONATHAN RABINOWITZ, Chair
RAY PERRY, Secretary

APPROVED BY AGENCY: December 28, 2021
FILED WITH LRC: January 13, 2022 at 3 p.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. EST on March 21, 2022 via video conference at the Kentucky Horse Racing Commission, 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 PM on March 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, Kentucky Horse Racing Commission, 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 regulation sets forth the procedures for administering the Kentucky Horse Breeders' Incentive Fund, established by KRS 230.804.

(b) The necessity of this administrative regulation:
This regulation is necessary to provide mechanisms for registering the Fund, distributing funds among registered groups, and imposing disciplinary measures for violation of the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes:
KRS 230.804(2)(b) authorizes the commission to promulgate administrative regulations prescribing the conditions and criteria for the distribution of moneys from the Kentucky Horse Breeders' Incentive Fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:
This administrative regulation follows KRS 230.804, which directs the commission to promulgate regulations establishing the conditions and criteria for the distribution of moneys from the Kentucky Horse Breeders' Incentive Fund.

(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 amendment will provide clarification to participants in the Kentucky Horse Breeders' Incentive Fund that a horse shall receive claim money from only one (1) Kentucky affiliate per year.

(b) The necessity of the amendment to this administrative regulation:
This amendment is necessary to ensure a horse does not claim money from multiple Kentucky affiliates per year and therefore taking an undue percentage of Incentive Fund money.

(c) How the amendment conforms to the content of the authorizing statutes:
This amendment further establishes the conditions and criteria for the distribution of moneys from the Kentucky Horse Breeders' Incentive Fund, which is authorized by KRS 230.804(2)(b).

(d) How the amendment will assist in the effective administration of the statutes:
This amendment provides clarifying language that a horse shall receive claim money from only one (1) Kentucky affiliate per year.

(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 Incentives & Development Division will be affected. There are currently eleven (11) Kentucky affiliates registered with the KHBIF. The affiliates' members will also be affected by this regulation.

(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:

This regulation does not require additional action on behalf of the interested parties.

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

This regulation amendment does not involve additional costs.

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

Compliance with this regulation will allow Kentucky affiliates and incentive winners to take part in the funds distributed from the Kentucky Horse Breeders' Incentive Fund.

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

(a) Initially:

No new costs are anticipated as a result of this proposed amendment.

(b) On a continuing basis:

No continuing additional costs are anticipated associated with this proposed amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

No new costs are anticipated as a result of this proposed amendment. The original source of funding is set forth in KRS 230.804(1) as a trust and revolving fund that is administered by the Kentucky Horse Racing Commission.

(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 new costs are anticipated as a result of this proposed amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

No new fees are anticipated as a result of this proposed amendment.

(9) TIERING: Is tiering applied?

Tiering is not applicable to this proposed amendment. All aspects of this regulation will be applied equally to each racing association.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 230.804 establishes the Kentucky Horse Breeders' Incentive Fund.

(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?

This proposed amendment will not generate any revenue for state or local government.

(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?

No new revenue is anticipated as a result of this proposed amendment.

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

No new costs are anticipated as a result of this proposed amendment.

(d) How much will it cost to administer this program for subsequent years?

No new costs are anticipated as a result of this proposed amendment.

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

Revenues (+/-):None.

Expenditures (+/-):None.

Other Explanation:

N/A.