

810 KAR 1:070. Kentucky thoroughbred breeders' incentive fund.

RELATES TO: KRS 230.330, 230.800

STATUTORY AUTHORITY: KRS 230.800

NECESSITY, FUNCTION AND CONFORMITY: KRS. 230.800 establishes the Kentucky Thoroughbred Breeders' Incentive Fund. KRS 230.800(2)(b) authorizes the 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 administration of payments from the fund.

Section 1. Definitions. (1) "Allowance race" means an overnight race for which eligibility and weight to be carried is determined according to specified conditions which include age, gender, earnings, and number of wins, excluding starter allowance races.

(2) "Claiming earnings" means the gross cash portion, as this portion is determined by The Jockey Club, of the prize awarded to a qualified Kentucky claiming horse that is paid from the association or the license holder permitted to conduct racing in the jurisdiction.

(3) "Claiming race" means a race in which every horse running in the race may be transferred in conformity with 810 KAR 1:015.

(4) "Grade I stakes race" means a nonrestricted race held in the United States which has been assigned Grade I stakes status for the year contested by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association for the United States.

(5) "Grade II stakes race" means a nonrestricted race held in the United States which has been assigned Grade II stakes status for the year contested by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association for the United States.

(6) "Grade III stakes race" means a nonrestricted race held in the United States which has been assigned Grade III stakes status for the year contested by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association for the United States.

(7) "Group I race" means:

(a) A nonrestricted race held in England, France, or Ireland which has been assigned Group I race status for the year contested by the European Pattern Committee; or

(b) A nonrestricted race held in Canada which has been assigned Canadian Grade I stakes status for the year contested by the Canadian Graded Stakes Committee.

(8) "Group II race" means:

(a) A nonrestricted race held in England, France, or Ireland which has been assigned Group II race status for the year contested by the European Pattern Committee; or

(b) A nonrestricted race held in Canada which has been assigned Canadian Grade II stakes status for the year contested by the Canadian Graded Stakes Committee.

(9) "Group III race" means:

(a) A nonrestricted race held in England, France, or Ireland which has been assigned Group III race status for the year contested by the European Pattern Committee; or

(b) A nonrestricted race held in Canada which has been assigned Canadian Grade III stakes status for the year contested by the Canadian Graded Stakes Committee.

(10) "Intended breeder of record" means the owner or lessee of a thoroughbred mare who desires to use the mare for breeding purposes and to qualify the foal for the Kentucky Thoroughbred Breeders' Incentive Fund and who is listed as the intended breeder of record on the forms necessary to register under the KBIF.

(11) "KBIF" means the Kentucky Thoroughbred Breeders' Incentive Fund.

(12) "KBIF registered horse" means a horse registered with the Kentucky Thoroughbred Breeders' Incentive Fund.

(13) "Kentucky sire" means a sire registered as a Kentucky Thoroughbred Development Fund sire.

(14) "Kentucky Thoroughbred Breeders' Incentive Fund" means the trust and revolving fund set out in KRS 230.800.

(15) "Maiden special weight race" means a race in which:

(a) None of the runners have been previously declared a winner; and

(b) None of the runners are eligible to be claimed.

(16) "Overnight race" means a race for which entries close at a time set by the racing secretary.

(17) "Qualified breeder" means the breeder of record as listed in The Jockey Club records.

(18) "Qualified Kentucky claiming horse" means a foal who is born out of a qualified mare and from a Kentucky sire, and who receives earnings from a claiming race in Kentucky.

(19) "Qualified mare" means a thoroughbred dam who resides in Kentucky from the time of the first cover in Kentucky by a Kentucky sire until foaling, unless one (1) of the exceptions in Section 5(4) of this administrative regulation is met.

(20) "Qualified winner" means a thoroughbred horse born out of a qualified mare and from a Kentucky sire and whose nose reaches the finish line first or is placed first through disqualification by the stewards and is not eligible to be claimed in that race.

(21) "Qualified winner's earnings" means the gross cash portion of the prize, as this portion is determined by The Jockey Club, awarded to the qualified winner of a race that is paid for from the association or the license holder permitted to conduct racing in the jurisdiction.

(22) "Starter allowance" means a race written to allow claiming horses who have improved from their earlier form to run in a nonclaiming event.

Section 2. Timing of Awards; Eligibility. (1) Disbursements from the Kentucky Thoroughbred Breeders' Incentive Fund shall be made as soon as is practicable after the end of each full racing year based on a calendar year, but not later than March 31 of the calendar year following the last date the application may be filed under Section 7(3)(b) of this administrative regulation.

(2) For a horse foaled prior to 2007, if the horse is eligible to be registered to receive funds under the Kentucky Thoroughbred Development Fund, the breeder shall be

eligible to receive funds from the Kentucky Thoroughbred Breeders' Incentive Fund, subject to registration under Section 4(1) of this administrative regulation.

(3) For a horse foaled during or after 2007, the requirements set forth in this administrative regulation shall be met.

(4) The races eligible for awards from the KBIF as provided in Sections 3 and 6 of this administrative regulation shall be those run on and after January 1, 2006.

Section 3. Awards. (1)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each of the Kentucky Derby and Kentucky Oaks.

(b) The incentive shall be fifty thousand dollars (\$50,000).

(2)(a) An incentive shall be awarded to the top twenty (20) horses with the most claiming wins in Kentucky each year.

(b) Horses earning awards at a Kentucky race track through any component other than the claiming component during the same calendar year shall not be eligible for the Kentucky claiming component.

(c) An incentive of \$200,000 shall be distributed to the top twenty (20) qualified Kentucky claiming horses with the most wins, as follows:

1. \$20,000 to the horse with the most wins;
2. \$17,500 to the horse with the second most wins;
3. \$15,000 to the horse with the third most wins;
4. \$12,500 to the horse with the fourth most wins;
5. \$12,000 to the horse with the fifth most wins;
6. \$11,500 to the horse with the sixth most wins;
7. \$11,000 to the horse with the seventh most wins;
8. \$10,500 to the horse with the eighth most wins;
9. \$10,000 to the horse with the ninth most wins;
10. \$9,500 to the horse with the tenth most wins;
11. \$9,000 to the horse with the eleventh most wins;
12. \$8,500 to the horse with the twelfth most wins;
13. \$8,000 to the horse with the thirteenth most wins;
14. \$7,500 to the horse with the fourteenth most wins;
15. \$7,000 to the horse with the fifteenth most wins;
16. \$6,500 to the horse with the sixteenth most wins;
17. \$6,000 to the horse with the seventeenth most wins;
18. \$6,000 to the horse with the eighteenth most wins;
19. \$6,000 to the horse with the nineteenth most wins; and
20. \$6,000 to the horse with the twentieth most wins.

(d) Claiming earnings earned at a Kentucky race track from the same calendar year shall be used to settle any ties.

(e) If two horses have the same number of wins and the same total earnings, all incentive totals to which those horses would have been entitled shall be divided equally between them. This shall apply in dividing all incentives whatever the number of horses that finish with the same number of wins and the same total earnings.

(3)(a) For those KBIF registered horses foaled in 2007 or after, an incentive shall be awarded to the qualified breeder of the qualified winner of each maiden special weight

and allowance race held in the United States, but outside Kentucky, or at Woodbine Racetrack in Ontario, Canada.

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings except it shall not exceed three thousand dollars (\$3,000).

(4)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each maiden special weight and allowance race held in Kentucky.

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings except it shall not exceed three thousand dollars (\$3,000).

(5)(a) For those KBIF registered horses foaled in 2007 or after, an incentive shall be awarded to the qualified breeder of the qualified winner of each non-graded stakes race held in the United States, but outside Kentucky, or at Woodbine Racetrack in Ontario, Canada.

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings except it shall not exceed four thousand dollars (\$4,000).

(6)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each non-graded stakes race held in Kentucky.

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings except it shall not exceed four thousand dollars (\$4,000).

(7)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each:

1. Grade I stakes race held in the United States;
2. Group 1 race held in Canada, England, France, and Ireland; and
3. Group I race held on Dubai World Cup day, Japan Cup day, and Hong Kong International day.

(b) The incentive shall be seven thousand, five hundred dollars (\$7,500).

(8)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each:

1. Grade II and Grade III stakes race held in the United States; and
2. Group 2 and Group 3 race held in Canada, England, France, and Ireland.

(b) The incentive shall be five thousand dollars (\$5,000).

(9) An incentive shall not be awarded to the winner of any Breeders' Cup World Championship race.

Section 4. Registration of Foals. (1)(a) For a horse foaled prior to 2007 and eligible to be registered under Section 2(2) of this administrative regulation, the intended breeder of record shall file with the commission a "Grandfather Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for a horse born in 2006 and prior years)".

(b) The application shall be filed no later than December 31 of the year following the year in which the horse has raced in a race that would qualify him for an incentive from the KBIF.

(c) A filing fee of thirty (30) dollars may be paid with the application or it shall be deducted from the award amount.

(2) The intended breeder of record shall register the unborn foal with the commission on or prior to August 15 of the breeding season by filing the "Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for the breeding season

beginning in 2007)" and paying a filing fee of sixty (60) dollars, except as provided in subsection (5) of this section.

(3)(a) The commission shall be recognized and designated as the sole official registrar of the Kentucky Thoroughbred Breeders' Incentive Fund for the purposes of registering Kentucky thoroughbred foals in accordance with this administrative regulation.

(b) The records of The Jockey Club shall be used as the official records of the commission for determining the following information:

1. The identity of the qualified breeder;
2. The claiming wins and earnings for each race pursuant to which an award shall be granted under this administrative regulation;
3. The qualified winners' earnings for each race pursuant to which an award shall be granted under this administrative regulation;
4. The name of the qualified winner for each race pursuant to which an award shall be granted under this administrative regulation;
5. The name of each horse determined to be a qualified Kentucky claiming horse for purposes of calculating the awards under Section 3(2) of this administrative regulation;
6. The registration number or special identification number of the KBIF-registered horse;
7. The name of the KBIF-registered horse; and
8. Other information for purposes of administering the KBIF.

(4) If the information on a form required under this section is found to be incorrect or becomes incorrect or changes, the person considered to be the intended breeder of record shall promptly file an amended form with the commission to correct the information within thirty (30) days of realizing the inaccuracy or of the circumstances causing the information to change.

(5)(a) A hardship filing may be made if the intended breeder of record can prove that there was good cause for the application to not have been filed on a timely basis as required under subsection (2) of this section, and that the foal otherwise met the eligibility requirements to be a KBIF-registered horse. The filing shall be made on the form "Late Filing of Application for the Kentucky Breeders' Incentive Fund".

(b) The amount of the filing fee shall be as follows:

1. For a filing made after August 15 of the breeding season and on or prior to December 31 of the cover year, the filing fee shall be \$150;
2. For a filing made after December 31 of the cover year and on or prior to December 31 of the weanling year, the filing fee shall be \$750; and
3. For a filing made between January 1 and December 31 of the yearling year, the filing fee shall be \$1,500. No other late filing shall be permitted.

(6) If ownership of a mare is transferred, a "Mare Transfer of Ownership Report in connection with the Kentucky Thoroughbred Breeders' Incentive Fund" shall be filed with the commission.

(7) If any registration or nomination deadline imposed by this administrative regulation falls on a weekend or holiday, the deadline shall be moved to the next business day following the original deadline.

Section 5. Qualification of Foal And Qualified Mare. (1) The commission may inspect the location where the mare proposed to be a qualified mare is boarded to determine that the residency requirement is met. The commission may also request, obtain, and inspect records relating to the location of the mare proposed to be a qualified mare to determine that the residency requirement is met.

(2) The person claiming to be the qualified breeder shall bear the burden of proof to show that a mare is a qualified mare.

(3) A failure to comply with a term, condition, or requirement of this administrative regulation shall not result in the loss of the registration of the foal, if the person claiming the foal should be registered proves to the commission:

(a) The failure to comply was insignificant with respect to the registration requirements as a whole; and

(b) A good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of this administrative regulation.

(4) In order for the mare to be a qualified mare as defined in Section 1(19) of this administrative regulation, the thoroughbred dam shall have resided in Kentucky from the time of the first cover in Kentucky by a Kentucky sire until foaling unless one (1) of the following exceptions is met:

(a) Medical procedure.

1. A medical procedure is required to be performed to protect the health of the mare or the unborn foal that involves an extraordinary medical situation and the breeder desires to have an expert located outside of Kentucky conduct the procedure;

2. The owner or the lessee of the mare, when the mare leaves Kentucky, files an "Application to Move a Mare outside of Kentucky in connection with the Kentucky Thoroughbred Breeders' Incentive Fund" and provides information relating to the procedure as requested by the commission within fourteen (14) days after the mare leaves Kentucky;

3. The executive director of the commission approves the departure of the mare from Kentucky; and

4. The mare remains under the care of a veterinarian during the entire period of time she is not residing in Kentucky other than the time during which she is traveling to and from Kentucky; or

(b) Training.

1. The mare has not yet delivered her first foal and is in active training outside of Kentucky;

2. The owner or the lessee of the mare, when the mare leaves Kentucky, files an "Application to Move a Mare Outside of Kentucky in connection with the Kentucky Thoroughbred Breeders' Incentive Fund" and provides information relating to the training outside of Kentucky as requested by the commission within fourteen (14) days after the mare leaves Kentucky;

3. The executive director of the commission approves the departure of the mare from Kentucky; and

4. The mare returns to Kentucky within ten (10) days after the end of her racing career.

(5) The executive director shall notify the commission if an exception is made to the residency requirement pursuant to subsection (4) of this section.

(6) A qualified breeder of a qualified mare shall be responsible for:

(a) The registration and records of the KBIF -registered horse; and

(b) Complying with the requirements of the Kentucky Thoroughbred Breeders' Incentive Fund.

(7) The owner or lessee of the mare may withdraw the mare's foal from the KBIF by filing a "Notice of Withdrawal of Foal from the Kentucky Thoroughbred Breeders' Incentive Fund."

Section 6. Bonus Calculation. (1) Funds available in the KBIF state account resulting from the breeding season relating to each year preceding the granting of the actual awards shall be apportioned according to Sections 3 and 6 of this administrative regulation.

(2) The funds apportioned to each qualified breeder shall be awarded by determining the amount a qualified breeder is eligible to receive based on Sections 3 and 6 of this administrative regulation.

(3) If, at the close of any calendar year, inadequate funding is available to the KBIF to fund the awards provided for in Section 3 of this administrative regulation, the funding shall be decreased proportionally among all awards, excluding the Kentucky claiming award, the Kentucky Oaks award, and the Kentucky Derby award until funding is adequate to fund all awards.

(4)(a) If, at the close of a calendar year, the amount available for awards is in excess of the amount necessary to fund the awards provided in Section 3 of this administrative regulation, after payment of operating expenses, a reserve fund shall be established in the KBIF in an amount which is no more than five (5) percent of the amount of funding available from tax receipts for that calendar year.

(b) Moneys in the reserve account may be used as needed to provide funding of awards in a subsequent calendar year if the amount available at the close of the last calendar year is insufficient to fund the awards provided in Section 3 of this administrative regulation.

(c) Additional money shall not be added to the reserve fund if it contains at least \$5,000,000 when the excess funding is available.

(5) If, at the close of a calendar year, the amount available for awards is in excess of the amount necessary to fund the awards provided in Section 3 of this administrative regulation and an amount has been designated for the reserve fund provided for in subsection (4)(a) of this section, then the awards shall be increased proportionally among all awards except the Kentucky claiming award, the Kentucky Oaks award, and the Kentucky Derby award.

Section 7. Application Requirements. (1) The amount due for awards shall be calculated after the end of each racing year. The recipient of an award shall be notified of the amount of the award to which the recipient may be entitled according to the last known address on file with the commission.

(2)(a) After receipt of notification of an award, each potential recipient shall return an application for the award that certifies that the applicant is entitled to the award and certifies the applicant's taxpayer ID number or Social Security number.

(b) The application shall be on the form "Application for an Award from Kentucky Thoroughbred Breeders' Incentive Fund".

(c) A breeder may appoint an authorized agent to complete the "Application for Award from Kentucky Thoroughbred Breeders' Incentive Fund" by completing and filing with the commission a "Kentucky Thoroughbred Breeders' Incentive Fund Authorized Agent Form".

(3)(a) Awards due recipients who cannot be located by December 31 of the year after the year in which the qualified winner or qualified Kentucky claiming horse became eligible to receive an incentive under Section 3 of this administrative regulation shall lapse to the KBIF for distribution or building the reserve in the following year.

(b) Failure to return the application required by subsection (2) of this section by December 31 of the year after the year in which the qualified winner or qualified Kentucky claiming horse became eligible to receive an incentive under Section 3 of this administrative regulation, shall result in forfeiture of the award and the award money shall lapse to the KBIF for distribution or building the reserve in the following year.

Section 8. Disputes. (1) Any dispute arising under this administrative regulation shall be raised by the aggrieved party filing a petition seeking relief with the executive director, within thirty (30) days of action or inaction leading to the dispute.

(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 9. Disciplinary Procedures. (1) The commission may deny or revoke the registration of a foal or horse if the qualified breeder, or an applicant for qualified breeder status:

(a) Provides the commission with incorrect, false, or misleading information concerning a foal or horse and fails within thirty (30) days to provide accurate information upon request by the commission;

(b) Fails to furnish within thirty (30) days information the commission has requested relating to the registration of a foal or horse; or

(c) Violates this administrative regulation in any other manner.

(2) If the commission denies or revokes the registration of the foal or horse, the qualified breeder or applicant for qualified breeder status may request, and the commission shall thereupon schedule, a hearing to be conducted pursuant to KRS Chapter 13B.

(3) At the conclusion of the hearing, the commission shall in its final order determine whether the qualified breeder or applicant for qualified breeder status has provided the commission with false or misleading information, or has failed to provide the commission with requested information, or has violated this administrative regulation in any other manner, and may take one (1) or more of the following actions:

(a) Deny or revoke the registration;

(b) Uphold the denial or revocation of the registration;

(c) Rescind the denial or revocation of the registration; or

(d) Bar the applicant who failed to furnish the requested information or who has violated the administrative regulation from registering foals to the fund for a period of

one (1) to five (5) breeding seasons, based on the seriousness of the violation, beginning with the season in which the violation occurred.

(4) If a person or his or her designee or representative fails to appear at the hearing, the commission may take one (1) or more of the following actions:

(a) Deny or revoke the registration; or

(b) Bar the owner or lessee who failed to respond to the summons from registering foals to the fund for a period of one (1) to five (5) breeding seasons, based on the seriousness of the violation, beginning with the breeding season in which the violation occurred.

(5) A second or subsequent violation of this administrative regulation may result in a lifetime bar of the applicant or qualified breeder from being eligible to receive an incentive from the KBIF.

(6) The commission shall notify the applicant or qualified breeder in writing of the action taken by the commission.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Grandfather Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for a horse born in 2006 and prior years)", KHRA Form 20-1, (4/06);

(b) "Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for the breeding season beginning 2007)", KHRA Form 20-3, (4/06);

(c) "Mare Transfer of Ownership Report in connection with the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-4, (4/06);

(d) "Kentucky Thoroughbred Breeders' Incentive Fund Authorized Agent Form", KHRA Form 20-5, (4/06);

(e) "Application to Move a Mare Outside of Kentucky in connection with the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-6, (4/06);

(f) "Notice of Withdrawal of Foal from the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-7, (4/06);

(g) "Late Filing of Application for the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-8, (4/06); and

(h) "Application for Award from Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-9, (4/06).

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