

**PUBLIC PROTECTION CABINET
KENTUCKY HORSE RACING COMMISSION
(New Administrative Regulation)**

810 KAR 7:070. Violations, discipline, disputes, and investigation.

RELATES TO: KRS 230.215, 230.225(5)(c), 230.320, 230.330, 230.400, 230.400 445, 230.770, 230.800, 230.802, 230.804.

STATUTORY AUTHORITY: KRS 230.370, KRS 230.445, 230.770(6) and (7), 230.802(1) and (2)(b), KRS 230.804(2)(b).

NECESSITY, FUNCTION AND CONFORMITY: KRS 230.400 establishes the Kentucky Thoroughbred Development Fund and requires the Kentucky Horse Racing Commission to promulgate administrative regulations as may be necessary to carry out its provisions and purposes. KRS 230.800(2)(b) requires the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the Kentucky Thoroughbred Breeders' Incentive Fund. KRS 230.770(6) and (7) authorize the commission to promulgate administrative regulations establishing the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and the conditions, class, and quality of the races. KRS 230.802(1) establishes the Kentucky standardbred breeders' incentive fund. KRS 230.802(2)(b) authorizes the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. KRS 230.804(2)(b) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the Kentucky Horse Breeders' Incentive Fund. KRS 230.445 establishes the Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian development fund and requires the commission to promulgate administrative regulations to carry out the purpose of the statute and to administer the development fund in a manner to promote and aid in the development of the horse industry in Kentucky; upgrade the quality of racing in Kentucky; and to improve the quality of horses bred in Kentucky. 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 a uniform process for enforcing the standards for distribution of money from these funds and for resolving disputes related to them.

Section 1. Violations.

(1) It shall be a violation of this administrative regulation if an applicant or registrant under 810 KAR 7:020 to 7:060, or a person otherwise eligible for or claiming entitlement to an award from a fund administered under 810 KAR 7:020 to 7:060:

(a) Provides any official registrar under KRS 230.400, any advisory committee, or the commission with incorrect, false, or misleading information;

(b) Fails to furnish information requested by the official registrar, advisory committee, or commission within thirty (30) days;

(c) Is charged or convicted of a crime, offense, or other criminal or civil violation involving cruelty, mistreatment, abuse, or neglect of a horse;

(d) Engages in conduct that is against the best interests of horse breeding or horse racing;

or

(e) Violates any provision of KRS Chapter 230 or KAR Title 810 in any other manner.

(2) For any violation of this regulation, the commission may:

(a) Deny an application;

- (b) Suspend, deny, or revoke a registration; or
- (c) Deny or revoke an award.

(3) In addition to the penalties in subsection 2, for a violation of this administrative regulation, the commission may bar a person from participation in any incentive or development fund under 810 KAR Chapter 7 for a period of one (1) to five (5) years based on the seriousness of the violation. For a second or subsequent violation of this administrative regulation, the commission may impose a lifetime bar from participation in any fund administered under 810 KAR Chapter 7.

(4) A person charged, but not convicted of a crime, offense, or other criminal or civil violation as provided in subsection (1)(c) may petition the commission for reinstatement. The commission shall reinstate the earnings, registration, or application upon submission of proof satisfactory to the commission that the charges were dismissed and the facts forming the basis of the charges were false.

Section 2. Disciplinary Process.

(1) The commission shall investigate suspected violations of this administrative regulation.

(2) Upon the completion of the investigation, the person or persons conducting the investigation shall submit a written report to the executive director containing a statement of the facts disclosed by the investigation.

(3) Based on consideration of the investigative report, the executive director shall determine whether there is prima facie cause to believe that a violation has been committed.

(4) Upon determination that prima facie cause exists, the executive director shall issue written notice of disciplinary action. The notice shall set forth:

- (a) The statutory or regulatory violation;
- (b) The factual basis on which the disciplinary action is based;
- (c) The penalty imposed; and

(d) A statement that the notice may be appealed to an administrative hearing by written notice sent to the commission within twenty (20) calendar days of issuance of the notice.

(7) Notice of a disciplinary action under this section may be appealed to an administrative hearing. A written request for an administrative hearing shall be filed with the commission within twenty (20) calendar days of the date of the executive director's notice. The request shall identify the specific issues in dispute and the legal basis on which the executive director's decision on each issue is believed to be erroneous.

(8) An administrative hearing under this section shall be conducted under KRS Chapter 13B.

(9) If the request for an administrative hearing is not timely filed, the penalty laid out in the notice of disciplinary action shall be effective upon the expiration of the time to request an administrative hearing.

Section 3. Disputes.

(1) Any non-disciplinary dispute between the commission and an applicant or registrant under 810 KAR 7:020 to 7:060, or a person otherwise eligible for or claiming entitlement to an award from a fund administered under 810 KAR 7:020 to 7:060, shall be raised by the aggrieved party by 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.

(2) If the executive director and the aggrieved party do not agree on a resolution of the dispute, the executive director shall refer the matter for an administrative hearing under KRS Chapter 13B.

Section 4. Consent to Investigate; Additional Information. Application or registration under 810 KAR 7:020 to 7:060, or submission of any claim for an award from a fund administered under 810 KAR 7:020 to 7:060, shall constitute consent to:

- (1) Investigation by the commission or any advisory committee of all information provided to the commission or any advisory committee;
- (2) Site visits to verify all mare and stallion residency requirements set forth in 810 KAR Chapter 7; and
- (3) Provide any additional information requested by the commission or any advisory committee.

FRANKLIN S. KLING, JR., Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2018 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing five working days 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 cancelled. 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., December 31, 2018. Please 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: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email John.Forgy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for investigating and resolving disciplinary and other disputes related to horse development and breeder incentive funds.

(b) The necessity of this administrative regulation: This regulation is necessary to exercise the statutory authority of the KHRC set forth KRS 230.400, which establishes the Kentucky Thoroughbred Development Fund and requires the Kentucky Horse Racing Commission to promulgate administrative regulations as may be necessary to carry out its provisions and purposes; KRS 230.800(2)(b), which requires the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of monies from the Kentucky Thoroughbred Breeders' Incentive Fund; KRS 230.770(6) and (7), which authorize the commission to promulgate administrative regulations establishing the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and the conditions, class, and quality of the races; KRS 230.802(1), which establishes the Kentucky standardbred breeders' incentive fund; KRS 230.802(2)(b), which author-

izes the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the Kentucky standardbred breeders' incentive fund; KRS 230.804(2)(b), which authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of monies from the Kentucky Horse Breeders' Incentive Fund; and KRS 230.445, which establishes the Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian development fund and requires the commission to promulgate administrative regulations to carry out the purpose of the statute and to administer the development fund in a manner to promote and aid in the development of the horse industry in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the statutory authority granted to the Kentucky Horse Racing Commission by KRS 230.370, KRS 230.445, 230.770(6) and (7), 230.802(1) and (2)(b), KRS 230.804(2)(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a uniform process for enforcing the standards for distribution of money from these funds and for resolving disputes related to them.

(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 is a new administrative regulation.

(b) The necessity of the amendment to this regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners, breeders, and official breed registrars of thoroughbred, Standardbred, and other horse breeds.

(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: Persons charged with a violation of the Kentucky Horse Racing Commission's development or breeder incentive fund regulations or having a dispute with the commission over those funds will be required to conform to the procedures established in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities participating in the administrative process will face potential costs associated with an administrative hearing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? As a result of compliance, Kentucky's horse owners and breeders will benefit from having their duties and rights with respect to discipline, disputes, and appeals clearly defined.

(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 regu-

lation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no cost associated with the implementation and enforcement of this administrative regulation: Any necessary funding will be provided from the budget of 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 additional fees or funding will be 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 increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this new administrative regulation will apply to all similarly situated entities in an equal manner.

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 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. The statutory authority for this administrative regulation is found in KRS 230.370, 230.445, 230.770(6) and (7), 230.802(1) and (2)(b), 230.804(2)(b).

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 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? This administrative regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? No revenue 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 revenue will be required to administer this regulation for the first year.

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.