

810 KAR 1:110. Out-of-competition testing.

RELATES TO: KRS 230.215, 230.230, 230.240, 230.260, 230.290, 230.300, 230.310, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes new sampling and testing procedures for substances prohibited by this administrative regulation, and establishes penalties for individuals who are found to be in violation of this administrative regulation.

Section 1. Definitions. (1) "Actionable finding" means a determination by the commission that a substance described in Section 2 of this administrative regulation was present in a horse based on:

(a) The commission's review of a report of finding issued by the commission laboratory and its review of split sample analysis results; or

(b) The commission's review of a report of finding issued by the commission laboratory for which an owner and trainer have waived their right to have a split sample analysis performed.

(2) "Sample" means that portion of a specimen subjected to testing by the commission laboratory.

(3) "Sampling" means the act of collecting a specimen from a horse.

(4) "Specimen" means a sample of blood, urine, or other biologic matter taken or drawn from a horse for chemical testing.

Section 2. Prohibited Substances and Practices. (1) The following shall be a violation of this administrative regulation:

(a) The presence in, or administration to, a horse, at any time, of blood doping agents including: erythropoietin, darbepoetin, hemoglobin-based oxygen carriers, or any other substance that enhances the oxygenation of equine body tissue;

(b) The nontherapeutic administration to, a horse, at any time, of whole blood or packed red blood cells;

(c) The presence in, or administration to, a horse, at any time, of naturally produced venoms, synthetic analogues of venoms, derivatives of venoms or synthetic analogues of derivatives of venoms;

(d) The presence in, or administration to, a horse, at any time, of growth hormones;

(e) The possession of erythropoietin, darbepoetin, hemoglobin-based oxygen carriers, naturally produced venoms, synthetic analogues of venoms, derivatives of venoms, synthetic analogues of derivatives of venoms, or growth hormones on the grounds of a licensed association

or a training facility under the jurisdiction of the commission; and

(f) The possession at any time of whole blood or packed red blood cells on the grounds of a licensed association or a training facility under the jurisdiction of the commission by anyone other than a licensed veterinarian rendering emergency treatment to a horse located on the grounds of the association or training facility. The attending veterinarian shall notify the commission veterinarian of the intent to administer whole blood or packed red blood cells prior to his or her collection or possession of the whole blood or packed red blood cells.

(2) The use of a hyperbaric oxygen chamber shall not be a violation of this administrative regulation.

Section 3. Out-of-Competition Testing. (1) Any horse eligible to race in Kentucky shall be subject to testing without advance notice for the substances specified in Section 2 of this administrative regulation. A horse is presumed eligible to race in Kentucky if:

(a) It is under the care, custody, or control of a trainer licensed by the commission;

(b) It is owned by an owner licensed by the commission;

(c) It is nominated to a race at an association licensed pursuant to KRS 230.300;

(d) It has raced at an association licensed pursuant to KRS 230.300 within the previous twelve (12) calendar months;

(e) It is stabled on the grounds of an association licensed pursuant to KRS 230.300 or a training facility subject to the jurisdiction of the commission; or

(f) It is nominated to participate in the Kentucky Thoroughbred Development Fund.

(2) A horse subject to testing under subsection (1) of this section may be designated for testing by the executive director, the chief state steward, or their respective designee.

(3) A horse designated for testing under this section shall be subject to testing for the substances described in Section 2 of this administrative regulation.

(4) An owner, trainer, or any authorized designee shall fully cooperate with the commission veterinarian, or his or her designee, by:

(a) Locating and identifying any horse designated for out-of-competition testing;

(b) Making the horse available for the collection of the specimen at an agreed upon stall or other safe location; and

(c) Observing the collection of the specimen.

1. If the owner, trainer or their authorized designee, is not available to observe the collection of the specimen, the collection shall be deferred until the trainer, owner, or their authorized designee, becomes reasonably available, but the collection shall occur no later than six (6) hours after notice of intent to collect a specimen from a horse is received.

2. If the collection does not occur within the time provided for in this subsection, any horse that is designated for testing may be barred from racing in Kentucky and placed on the veterinarian's list, 810 KAR 1:018, Section 18, and the steward's list, for a period of 180 days and the owner and trainer of the horse may be subject to the penalties described in Section 8 of this administrative regulation.

(5) If the owner, trainer, or any authorized designee fails to cooperate or otherwise prevents a horse from being tested, the horse designated for testing shall be barred from racing in Kentucky and placed on the veterinarian's list, 810 KAR 1:018, Section 18, and the steward's list, for 180 days, and the individual or individuals responsible for the failure to cooperate or prevention of the horse from being tested shall be subject to the penalties described in Section 8 of this administrative regulation.

(6) A horse that is barred from racing in Kentucky and placed on the Veterinarian's List and the Steward's List pursuant to subsection (5) or (6) of this section shall remain barred from racing and shall remain on the veterinarian's list and the steward's list:

(a) Upon sale or transfer of the horse to another owner or trainer until the expiration of 180 days; and

(b) Until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward.

Section 4. Specimen Collection. (1) A specimen shall be collected from any horse designated by the executive director, the chief state steward, or their designee, whether the horse is located in Kentucky or in another jurisdiction.

(2) If a designated horse is located in another jurisdiction, the executive director or commission veterinarian may select a veterinarian from another racing commission or regulatory entity to collect the specimen.

(3) If specimen collection occurs at a licensed association or training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, may collect a specimen from a horse designated for testing at any time.

(4) If specimen collection occurs at a location other than the grounds of a licensed association or a training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, shall collect the specimen between the hours of 7 a.m. and 6 p.m., prevailing time, and shall notify the owner, trainer, or any other person exercising care, custody, or control of the horse before arriving to collect the specimen.

(5) A licensed association or training facility under the jurisdiction of the commission at which a horse designated for testing is located shall cooperate fully in the collection of the specimen.

Section 5. Minimum and split samples. The commission veterinarian shall determine minimum and split sample requirements as set forth at 810 KAR 1:018, Section 11.

Section 6. Sample Storage and Testing. (1) Any out of competition sample collected pursuant to this administrative regulation shall be stored in a temperature controlled unit at a secure location chosen by the commission until the sample is submitted for testing. The samples shall be secured under conditions established by the commission veterinarian in accordance with 810 KAR 1:018, Section 11.

(2) The commission is the owner of an out of competition specimen.

(3) The sample may be submitted to the commission laboratory for testing on the same date the specimen is collected or on a subsequent date.

(4) A written chain of custody protocol shall be made available to the owner and trainer upon request.

(5) A trainer or owner of a horse receiving notice of a report of finding from the commission may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to a split sample laboratory which has documented its proficiency in detecting the substance associated with the report of finding and has been approved by the commission.

(6) Split samples shall be subject to 810 KAR 1:018, Section 12, and the chain of custody of any split sample shall be maintained in accordance with 810 KAR 1:018, Section 13.

(7) The cost of testing the split sample under subsections (5) and (6) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

Section 7. Steps After Actionable Finding or Any Other Violation of this Administrative Regulation. If there is an actionable finding, or any other violation of this administrative regulation,

the following steps shall be taken:

(1)(a) Within five (5) business days of receipt of notification of an actionable finding, the commission shall notify the owner and trainer in writing of the actionable finding and shall schedule a stewards' hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the stewards determine a continuation is necessary to accommodate the parties; and

(b) The commission shall cause the subject horse to be immediately placed on the Veterinarian's List, 810 KAR 1:018, Section 18, and the Steward's List, thereby rendering the horse ineligible to compete, pending the conduct of the hearing described in subsection (1)(a) of this section and the issuance of a steward's order; and

(2) Within thirty (30) days of the commission's discovery of any violation of this administrative regulation other than an actionable finding, the commission shall notify the owner and trainer in writing of the violation and shall schedule a stewards' hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the stewards determine a continuation is necessary to accommodate the parties.

Section 8. Penalty. A trainer, owner, or any other individual who violates this administrative regulation shall be subject to the following penalties:

(1) For a first offense:

(a) A revocation of the individual's license for a period of five (5) to ten (10) years;

(b) A fine of up to \$50,000;

(c) The forfeiture of any purse money earned at a licensed association by a horse in which the presence of a substance described in Section 2 of this administrative regulation was detected, between the time that the specimen was collected and the commission's determination of an actionable finding; and

(d) Any individual who has his or her license revoked for a violation of this administrative regulation shall go before the license review committee before being eligible for a new license.

(2) For a second offense:

(a) Permanent revocation of the individual's license; and

(b) The forfeiture of any purse money earned at a licensed association by a horse in which the presence of a substance described in Section 2 of this administrative regulation was detected, between the time that the specimen was collected and the commission's determination of an actionable finding.

(3) Upon a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected shall be barred from racing in Kentucky and placed on the veterinarian's list, 810 KAR 1:018, Section 18, and the steward's list, for a period of 180 days and shall remain barred from racing in Kentucky until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward.

(4) Upon a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected remains subject to the requirements of subsection (3) of this section:

(a) Upon sale or transfer of the horse to another owner or trainer before the expiration of 180 days; and

(b) Until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward.

(5) The penalties established by this administrative regulation shall supersede any set forth

in 810 KAR 1:028.

(6) The provisions of 810 KAR 1:018, Section 15 regarding a trainer's responsibility, shall apply to this administrative regulation.

(7) The chief state steward and the commission shall consider any mitigating or aggravating circumstances when assessing penalties pursuant to this administrative regulation.

Section 9. Postrace Testing. The commission may conduct postrace testing for the substances described in Section 2 of this administrative regulation in accordance with 810 KAR 1:130. If there is an actionable finding for the presence of any of the substances described in Section 2 of this administrative regulation as a result of postrace testing, the provisions of Sections 7 and 8 of this administrative regulation shall apply. (37 Ky.R. 1125; 1716; 2011; eff. 3-4-2011.)