PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(New Administrative Regulation)

810 KAR 8:040. Out-of-competition testing.

RELATES TO: KRS 230.215, 230.225(5), 230.240, 230.260, 230.290, 230.300, 230.310, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(11).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which horse racing shall be conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the use and 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 prohibited substances, and establishes penalties for individuals found to be in.

Section 1. Definitions.

(1) "Endogenous" means a substance that is naturally produced by the healthy body.

(2) "Exogenous" means a substance that is not naturally produced by the healthy body.

(3) "Out of competition testing" means all testing other than:

(a) Pre-race TCO2 testing; and

(b) Post-race testing at a licensed association under the jurisdiction of the commission.

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

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

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

Section 2. Prohibited Substances and Practices.

(1) All substances identified in this administrative regulation shall be prohibited unless specifically permitted. A positive finding by the commission laboratory of a substance prohibited by this administrative regulation in a specimen taken from a horse designated for testing by a commission veterinarian or his designee shall be prima facie evidence that a violation has occurred. Any reference to substances in this section does not alter the requirements for testing concentrations in race day samples set forth in 810 KAR 810 KAR 8:010 and 810 KAR 8:050.

(2) Any pharmacological substance not addressed by this administrative regulation and without current approval by the U.S. Food and Drug Administration for human or veterinary use shall be prohibited at all times absent prior approval of the commission. If a veterinarian seeks approval to use a pharmacological substance not currently approved by the U.S. Food and Drug Administration, the commission or its designee may consult with the Association of Racing Commissioners International, the Racing and Medication Testing Consortium, or their successors to determine whether to authorize use of the substance.

(3) Therapeutic substances not otherwise prohibited by this administrative regulation shall be permitted provided such substances:

(a) Are currently approved for human or veterinary use by the U.S. Food and Drug Administration; and

(b) Are prescribed and administered in the context of a valid veterinarian-client-patient relationship.

(4) Compounded medications not otherwise prohibited by this administrative regulation shall be permitted provided such medications:

(a) Are permitted by federal law or the law of the state where the horse is located when the compounded medication is administered; and,

(b) Are prescribed and administered in the context of a valid veterinarian-client-patient relationship.

(5) (a) Except as provided in paragraph (b) of this subsection, the following Anabolic Androgenic Steroids (AAS) are prohibited:

1. Exogenous AAS, including: 1-androstenediol (5α-androst-1-ene-3β,17β-diol); 1-androstenedione (5α-androst-1-ene-3,17-dione); bolandiol (estr-4-ene-3β,17β-diol); bolasterone; boldenone; boldione (androsta-1,4-diene-3,17-dione); calusterone; clostebol danazol ([1,2]oxazolo[4',5':2,3]pregna-4-en-20-yn-17α-ol); dehydrochlormethyltestosterone (4-chloro-17β-hydroxy-17α-methylandrosta- 1,4-dien- 3-one); desoxymethyltestosterone (17α-ethyl-5α-androst-2-en-17β-ol); drostanolone; ethylestrenol (19-norpregna-4-en-17α-ol); fluoxymesterone; formebolone; furazabol (17α-methyl[1,2,5]oxadiazolo[3',4':2,3]-5α-androstan-17β-ol); gestrinone; 4- hydroxytestosterone (4,17β-dihydroxyandrost-4-en-3-one); mestanolone; mesterolone; metandienone (17β-hydroxy-17α-methylandrosta-1,4-dien-3- one); metenolone; methandriol; methasterone (17β-hydroxy-2α,17α- dimethyl-5α-androstan-3-one); methyldienolone (17β-hydroxy-17α- methylestra-4,9-dien-3-one); methyl-1-testosterone (17β-hydroxy-17α-methyl-5α-androst-1-en-3-one); methylnortestosterone (17β-hydroxy-17α-methylestr-4-en-3-one); methyltestosterone; metribolone (methyltrienolone, 17β-hydroxy-17α-methylestra-4,9,11-trien-3-one); mibolerone; nandrolone; 19-norandrostenedione (estr-4-ene-3,17-dione); norboletone; norclostebol; norethandrolone; oxabolone; oxandrolone; oxymesterone; oxymetholone; prostanozol (17β-[(tetrahydropyran-2-yl) oxy]-1'H pyrazolo[3,4:2,3]-5α-androstane); quinbolone; stanozolol; stenbolone; 1-testosterone (17β hydroxy-5α-androst-1-en-3-one); tetrahydrogestrinone (17-hydroxy-18a- homo-19-nor-17α pregna-4,9,11-trien-3-one); and trenbolone (17β-hydroxyestr-4,9,11-trien-3-one).

2. Endogenous AAS or their synthetic esters when administered exogenously: androstenediol (androst-5-ene-3β,17β-diol); androstenedione (androst-4-ene-3,17-dione); dihydrotestosterone (17β-hydroxy-5α-androstan-3-one); prasterone (dehydroepiandrosterone, DHEA, 3β-hydroxyandrost-5-en-17-one); testosterone; and their metabolites and isomers, including but not limited to: 5α-androstane-3α,17α-diol; 5α-androstane-3α,17β-diol; 5α-androstane-3β,17α-diol; 5α-androstane-3β,17β-diol; 5β-androstane-3 α, 17β-diol, androst-4-ene-3α,17α-diol; androst-4-ene-3α,17β-diol; androst-4-ene-3β,17α-diol; androst-5-ene-3α,17α-diol; androst-5-ene-3α,17β-diol; androst-5-ene-3β,17α-diol; 4-androstenediol (androst-4-ene-3β,17β-diol); 5-androstenedione (androst-5- ene-3,17-dione); androsterone (3β-hydroxy-5α -androstan-17-one); epi-dihydrotestosterone; epitestosterone; etiocholanolone; 7α-hydroxy-DHEA; 7β-hydroxy- DHEA; 7-keto-DHEA;19-norandrosterone; 19-noretiocholanolone.

(b) Anabolic steroids may be used out of competition provided:

1. The anabolic steroid is currently approved for human or veterinary use by the U.S. Food and Drug Administration;

2. The administration is:

a. Performed pursuant to a valid veterinary prescription;

b. Entered into the horse's medical record by the administering veterinarian; and

c. Reported by the administering veterinarian to the commission no later than twenty-four (24) hours after administration or dispensing of the medication;

3. The record is made available upon request for inspection by the commission or its designee; and

4. The horse is placed on the Veterinarian's List for six (6) months after the last administra-

tion of an anabolic steroid or agent.

(6) (a) Except as provided in paragraph (b) of this subsection, the following anabolic agents shall be prohibited: 1) clenbuterol, 2) selective androgen receptor modulators (SARMs), 3) ractopamine, 4) tibolone, 5) zeranol, and 6) zilpaterol.

(b) Clenbuterol may be administered provided the treatment is:

1. Pursuant to a valid veterinary prescription; and

2. Reported by the administering veterinarian to the commission no later than 24 hours after administration or dispensing of the medication.

(7) The following substances shall be prohibited:

(a) Erythropoiesis-Stimulating Agents (ESAs), including darbepoetin (dEPO); erythropoietins (EPO); EPO-Fc; EPOmimetic peptides (EMP), e.g., CNTO 530 and peginesatide; and methoxypolyethylene glycol-epoetin beta (CERA);

(b) Non-erythropoietic EPO-Receptor agonists, including ARA-290, asialo EPO and carbamylated EPO; and

(c) Hypoxia-inducible factor (HIF) stabilizers, including cobalt (when detected at concentrations in excess the threshold prescribed in 810 KAR 8:010 Sec. 2(4)(b)), and roxadustat (FG-4592); and HIF activators, (e.g., argon, xenon).

(8)(a) Except as provided in paragraph (b) of this subsection, Chorionic Gonadotropin (CG) and Luteinizing Hormone (LH) and their releasing factors, shall be prohibited in male horses.

(b) Chorionic Gonadatropin (CG) and Luteinizing Hormone (LH) may be used in male horses provided:

1. The treatment is pursuant to a valid veterinary prescription; and

2. The administering veterinarian files a treatment plan with the commission prior to administering the medication.

(9)(a) Except as provided in paragraph (b) of this subsection, Corticotrophin releasing factors and corticotrophin releasing hormones (CCRH) shall be prohibited.

(b) Adrenocorticotrophic Hormone (ACTH) may be used provided the treatment is:

1. Pursuant to a valid veterinary prescription; and

2. Reported by the administering veterinarian to the commission no later than twenty-four (24) hours after administration or dispensing of the medication by the veterinarian.

(c) Growth Hormone (GH); Growth Hormone Releasing Hormone (GHRH); CJC-1295, sermorelin and tesamorelin; Growth Hormone Secretagogues (GHS); anamorelin; ipamorelin; GH-Releasing Peptides (GHRPs); alexamorelin; GHRP-6; hexarelin; and pralmorelin (GHRP-2) shall be prohibited.

(d) Venoms and toxins from sources, including snails, snakes, frogs, and bees and their synthetic analogues, including ziconotide, shall be prohibited.

(e) Growth factors, including Fibroblast Growth Factors (FGFs), Hepatocyte Growth Factor (HGF), Insulin-like Growth Factor-1 (IGF-1) and its analogues, Mechano Growth Factors (MGFs), Platelet-Derived Growth Factor (PDGF), Vascular-Endothelial Growth Factor (VEGF) and any other growth factor affecting muscle, tendon or ligament protein synthesis/degradation, vascularization, energy utilization, regenerative capacity or fiber type switching shall be prohibited.

(10) Platelet rich plasma (PRP) and autologous conditioned plasma (IRAP) may be used provided such treatment is:

(a) Pursuant to a valid veterinary prescription; and

(b) Reported to the commission’s representative at the time of sampling if administered within the preceding twenty-four (24) hours.

(11) All beta-2 agonists, including all optical isomers (i.e. *d*- and *l*-) where relevant, shall be prohibited.

(12) Clenbuterol and albuterol are permitted provided the treatment is:

(a) Pursuant to a valid veterinary prescription; and

(b) Reported by the administering veterinarian to the commission no later than twenty-four (24) hours after administration or dispensing of the medication by the veterinarian.

(13) Hormone and metabolic modulators shall be prohibited including:

(a) Aromatase inhibitors, including aminoglutethimide, anastrozole, androsta-1,4,6-triene-3,17-dione (androstatrienedione), 4-androstene-3,6,17 trione (6-oxo), exemestane, formestane, letrozole, testolactone;

(b) Selective estrogen receptor modulators (SERMs), including raloxifene, tamoxifen, toremifene;

(c) Other anti-estrogenic substances, including clomiphene, cyclofenil, fulvestrant;

(d) Agents modifying myostatin function(s), including myostatin inhibitors;

(e) Activators of the AMP-activated protein kinase (AMPK), including 5-Aminoimidazole-4-carboxamide ribonucleotide (AICAR); and Peroxisome Proliferator Activated Receptor δ (PPARδ) agonists including GW 1516;

(f) Insulins;

(g) Trimetazidine;

(h) Thyroxine, and thyroid modulators/hormones including T4 (tetraiodothyronine/thyroxine), T3 (triiodothyronine), or combinations thereof.

(i) Thyroxine (T4) is permitted provided that:

1. The treatment is pursuant to a valid veterinary prescription; and

2. A treatment report is filed in writing or electronically with the commission within twenty-four (24) hours of the administration or dispensing of the medication by the veterinarian.

(j) Altrenogest may be used in fillies and mares provided that such treatment is pursuant to a valid veterinary prescription. Altrenogest is permitted in intact males provided the treatment is:

1. Pursuant to a valid veterinary prescription; and

2. The administering veterinarian files a treatment plan with the commission prior to administering the medication.

(18)(a) Except as provided in paragraphs (b) and (c) of this subsection, diuretics shall be prohibited, including acetazolamide, amiloride, bumetanide, canrenone, chlorthalidone, ethacrynic acid, indapamide, metolazone, spironolactone, thiazides including bendroflumethiazide, chlorothiazide, hydrochlorothiazide, torsemide, triamterene, vasopressin receptor antagonists or vaptans, including tolvaptan.

(b) Furosemide and trichlormethiazide may be used out of competition provided the treatment is:

1. Pursuant to a valid veterinary prescription; and

2. Reported at the time of sampling if administered within the preceding twenty-four (24) hours.

(c) Other diuretics, including those set forth in paragraph (a) above, may be administered in an emergency provided the treatment is:

1. Pursuant to a valid veterinary prescription;

2. Reported to the commission within twenty-four (24) hours of administration.

(19) Masking agents, including desmopressin, plasma expanders (including glycerol; intravenous administration of albumin, dextran, and hydroxyethyl starch), and probenecid, shall be prohibited.

(20) The administration or reintroduction of any quantity of autologous, allogenic (homologous) or heterologous blood or red blood cell products of any origin into the circulatory system shall be prohibited.

(21) Artificially enhancing the uptake, transport or delivery of oxygen, with perfluorochemicals, efaproxiral (RSR13), hemoglobin products, hemoglobin-based blood substitutes, and microencapsulated hemoglobin products (excluding supplemental oxygen) shall be prohibited.

(22)(a) Except as provided in paragraph (b) of this subsection, any form of intravascular manipulation of the blood or blood components by physical or chemical means shall be prohibited.

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

(23) Polymers of nucleic acids or nucleic acid analogues shall not be transferred unless prior approval is requested and received from the commission or its designee.

(24) The use of normal or genetically modified hematopoietic cells shall be prohibited.

(25) Mesenchymal stem cells may be used for treatment of musculo-skeletal disorders, provided that such treatment is:

1. Entered by the veterinarian in the horse's medical record, which record shall be made available to a designee of the commission upon request;

2. Pursuant to a valid veterinary prescription; and

3. Reported to the commission's representative at the time of sampling.

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, the Kentucky Standardbred Development Fund, or the Kentucky quarter horse, paint horse, Appaloosa and Arabian 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, chief judge, or their respective designee.

(3) 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 a place designated by the commission veterinarian, or his or her designee; 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 issued by the commission veterinarian or his or her designee.

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, pursuant to 810 KAR 8:010, Section 17, and the steward's list or judges' 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.

(4) Responsible persons.

(a) The trainer of the horse shall be responsible for the condition of a horse sampled for an out-of-competition test while on the grounds of a licensed training facility or racetrack.

(b) If the horse is sampled while not on the grounds of a licensed training facility or racetrack, the owner shall be presumed to be the responsible person unless the owner can establish, by substantial evidence, that another licensed person had accepted the responsibility for the care, custody, and control of the horse, making such person the responsible person.

(c) If a horse sampled for an out-of-competition test was claimed, sold, or otherwise transferred during the time the substance giving rise to the positive test may have been administered, then the commission shall investigate to determine, by a preponderance of the evidence, the identity of the responsible person at the time such substance may have been administered.

(d) If the commission cannot determine a responsible person, then the commission may deem the owner responsible and may place the horse on the veterinarian's list for such time as is necessary to protect the integrity of racing.

(e) If a horse designated for testing is sampled at a location not under the jurisdiction of the commission, the trainer or his designee may declare at the time of sampling any reportable substances that have been administered to the horse but have not previously been disclosed to the commission.

Section 4. Specimen Collection.

(1) A specimen shall be collected from any horse designated by the executive director, the chief state steward, the presiding judge, 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 that jurisdiction's racing commission or regulatory entity to collect the specimen.

(3) 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) 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 orally or in writing the owner, trainer, or their designee 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, in consultation with the official laboratory, shall determine minimum and split sample requirements as set forth at 810 KAR 8:010, 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 8:010, Section 11.

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

(3) 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.

(4) Split samples shall be subject to 810 KAR 8:010, Section 11, and the chain of custody of any split sample shall be maintained in accordance with 810 KAR 8:010, Section 12.

(5) The cost of testing a, including shipping, shall be borne by the owner or trainer requesting the test.

Section 7. Notice of Violation and Hearing. Within five (5) business days of receipt by the stewards or judges of notification of a violation of this administrative regulation, the stewards or judges shall notify the owner and trainer orally or in writing of the violation and shall schedule a stewards' or judges' hearing within fourteen (14) calendar days of notification by the stewards or judges to the owner and trainer. The hearing may be continued if the stewards or judges determine a continuation is necessary to accommodate the parties.

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

(1) A positive finding of a substance prohibited by this administrative regulation shall be subject to the penalties for that substance set forth in 810 KAR 8:010, 810 KAR 8:020, and 810 KAR 8:030.

(2) 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, pursuant to 810 KAR 8:010, Section 17, and the steward's list or judges' 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.

(3) A horse that is barred from racing in Kentucky and placed on the Veterinarian's List and the steward's list, or judges' list pursuant to subsection (4)(c)(2) or subsection (5) of this section shall remain barred from racing and shall remain on the veterinarian's list and the steward's list or judge'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 prohibited by this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward or presiding judge.

(4) Willful failure to make a horse available for sampling, tampering with or attempting to tamper in order to alter the integrity and validity of a sample, including urine substitution or adulteration, or any other deceptive acts or interference in the sampling process, shall be penalized as follows:

(a) For a first offense, a Class A penalty as set forth in 810 KAR 8:030.

(b) For a second offense, permanent license revocation.

(c) A horse that is not produced for out of competition testing shall be placed on the Veterinarian's List for a minimum of 180 days.

(5) Failure to report treatment as required by this administrative regulation:

(a) For a first offense, a warning.

(b) For a second or subsequent offense, a Class D penalty as set forth in 810 KAR 8:030.

(6) Upon finding 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 pursuant to 810 KAR 8:010, Section 17, and the stewards' or judges' list, for a period of up to 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 or presiding judge.

(7) Upon finding 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 (4) 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 or presiding judge.

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 27, 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 by no later than five (5) 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 Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation authorizes out of competition sampling and testing procedures that allow the Commission to detect the presence of certain substances in a horse that are prohibited by this regulation as well as 810 KAR 8:010, but cannot be effectively detected through the existing post-race sampling and testing procedures. These procedures, which allow the commission to collect specimens from a horse prior to the horse being entered in a race, apply to substances identified in the regulation that have the ability to affect a horse's performance on the racetrack long after they can be detect-

ed in the horse's system through post-race sampling and testing. The regulation also establishes a procedure for the adjudication of violations of this administrative regulation.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation: This regulation is necessary because the substances identified in the regulation cannot be effectively regulated through existing post-race sampling and testing procedures. The prohibited substances remain in a horse's system for a limited period of time, but their ability to affect a horse can last for weeks or even months beyond the period during which they can be detected. Because the effects far outlast the substances' detection period, these substances are generally administered well in advance of a race and are not detectible through post-race specimen testing. Therefore, it is necessary for the commission to be able to collect a specimen from a horse at or close to the time a prohibited substance may have been administered, which in many instances is before a horse is even entered in a race. This regulation allows the commission to collect such specimens. While this is a new regulation that addresses all breeds of horses racing in Kentucky, it replaces three regulations that are separately applicable to 1) thoroughbred racing (810 KAR 1:110), 2) Standardbred racing (811 KAR 1:240), and 3) Quarter Horse, Paint Horse, Appaloosa and Arabian Racing (811 KAR 2:250). This regulation includes new provisions setting forth a detailed list of prohibited substances modeled on the prohibited substance lists of the World Anti-Doping Agency (WA-DA) and the United States Anti-Doping Agency (USADA). Additionally, the Racing Medication and Testing Consortium (RMTC) has established permissible exemptions – supported by veterinary declaration of use or dispensing – for certain substances on the prohibited substances list that do have legitimate use in the treatment of horses in training. These substances – which include anabolic steroids, clenbuterol, thyroxine, and others – while having therapeutic uses, also have illicit uses. Investigations conducted in Kentucky, New York, California, and other states have determined that these substances have been extensively used in non-therapeutic ways to enhance performance. This regulation regulates the use of these exempted substances through reporting requirements and restricted administration intervals for these exempted substances. The regulation also revises and simplifies the adjudication and penalty procedures in the previous regulations that are to be followed upon the finding of a violation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 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 regulation allows the commission to sample horses in such a way as to effectively restrict or prohibit "the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race," and further allows the commission to "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."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The commission's current post-race sampling and testing procedures are not adequate to detect the administration of the prohibited substances identified in the regulation. This regulation rectifies that problem by allowing the commission to sample and test a horse at the time and in the manner necessary to detect the presence of those prohibited substances, thus fulfilling its statutory mandate.

(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 administrative regulation: This is a new administrative regulation.

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

(d) How the amendment will assist in the effective administration of the statues: 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 and trainers with horses seeking to race in the Commonwealth; the seven currently-licensed racing associations offering horse racing in Kentucky; any training center under the jurisdiction of the commission; jockeys and any other persons who come into contact with horses racing or training in the Commonwealth; patrons who place pari-mutuel wagers on horse races in the Commonwealth; and the Kentucky Horse Racing Commission. In the year 2017, the Kentucky Horse Racing Commission licensed approximately 6000 thoroughbred owners, trainers, and owner/trainers, 194 jockeys, and 122 veterinarians; approximately 1100 standardbred owners, trainers, drivers, and owner/trainers/drivers, and 9 veterinarians; and 14 individuals specifically to participate in an Arabian horse race conducted at Churchill Downs. These numbers remain generally consistent from year to year.

(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: Owners and trainers will be required to cooperate with the commission in the sampling of horses by locating and identifying any horse designated for testing, making the horse available at a stall or other safe location for the collection of a specimen and witnessing the collection of the specimen. The licensed racing associations and training centers under the jurisdiction of the commission will be required to cooperate, if necessary, by locating horses to be sampled. As is the case with post-race sampling and testing, and as set forth in KRS 230.240(2), racing associations will continue to pay the cost of testing the specimens. Jockeys and other licensees that come into contact with horses racing in the Commonwealth will not have any additional responsibilities as a result of this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The commission will not have any out of pocket expenses, but will devote employee time toward identifying horses to be tested and collecting specimens for testing. As is the case with post-race sampling and testing, and as set forth in KRS 230.240(2), racing associations will continue to pay the cost of testing the specimens. Owners and trainers will continue to bear any costs associated with the testing of split samples

if a primary sample collected from one of their horses tests positive for a prohibited substance and the owner or trainer elects to have a split sample tested.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each of the entities identified above will benefit from sampling and testing procedures that will allow the commission to detect the presence of the prohibited substances identified in the regulation.

The horses, jockeys, and any other individuals who come into contact with horses racing or training in the Commonwealth will benefit because the regulation provides a strong deterrent to putting their health, safety, and welfare at risk through the use of the prohibited substances;

The owners and trainers will benefit from the knowledge that they are competing on a level playing field with each other and will be less likely to feel the need to take their horses to race in other jurisdictions;

The patrons placing pari-mutuel wagers on horse racing in the Commonwealth will benefit from the knowledge that certain horses cannot gain an advantage over others through the use of prohibited substances;

The racing associations and the commission will benefit from increased public confidence in the integrity of horse racing in the Commonwealth;

The Commonwealth will benefit from the tax revenue generated when owners and trainers remain in state rather than racing in other jurisdictions and from the tax revenue generated when the betting public wagers their money on races run in Kentucky.

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

(a) Initially: The commission will not have any out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting samples from those horses.

(b) On a continuing basis: The commission will not have any out of pocket expenses related to the regulation but will devote additional employee time toward designating horses to be tested and collecting samples from those horses.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission will not incur any out of pocket expenses as a result of this regulation. It will compensate employees for any additional time spent on designating horses to be tested and collecting samples from those horses from its general operating budget.

(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 increase in fees or funding will be necessary to implement this new administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The regulation does not establish any fees or directly or indirectly increase any fees. However, as is the case with post-race sampling and testing, and as set forth in KRS 230.240(2), racing associations will continue to pay the cost of testing the specimens. To the extent that these expenses could be characterized as "fees," this regulation will result in an increase in testing and the associations may see a corresponding increase in their expenses. There associations, however, have expressed support for this regulation because of the manner in which it ensures public confidence in the integrity of racing.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

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.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, 230.370.

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? The Kentucky Horse Racing Commission will not incur any monetary expenses, but will devote some employee time toward designating horses for testing and collecting specimens to be tested.

(d) How much will it cost to administer this program for subsequent years? The Kentucky Horse Racing Commission will not incur any monetary expenses, but will devote some employee time toward designating horses for testing and collecting specimens to be tested.

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: Current KHRC staff will devote time to implementing and enforcing this regulation, but no fiscal impact is anticipated at this time.