PUBLIC PROTECTION CABINET

Kentucky Horse Racing Commission

(New Administrative Regulation)

810 KAR 8:010. Medication; Testing Procedures; Prohibited Practices

RELATES TO: KRS 230.215, 230.225, 230.240, 230.260, 230.265, 230.290, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215, 230.225, 230.240, 230.260, 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.260(8), and 230.320 authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. 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 participating in a race. This administrative regulation establishes requirements and controls in the administration of drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibilities relating to the health and fitness of horses.

Section 1. Definitions. (1) "AAS" or "anabolic steroid" means an anabolic androgenic steroid.

(2) "Administer" means to apply to or cause the introduction of a substance into the body of a horse.

(3) "Commission laboratory" means a laboratory chosen by the commission to test biologic specimens from horses taken under the supervision of the commission veterinarian.

(4) "Location under the jurisdiction of the commission" means a licensed race track or a training center as described in KRS 230.260(5).

(5) "Permitted NSAIDs" means the following permitted non-steroidal anti-inflammatory drugs: phenylbutazone, flunixin, and ketoprofen, if administered in compliance with Section 8 of this administrative regulation.

(6) "Positive finding" means the commission laboratory has conducted testing and determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administrative regulation, 810 KAR 8:020, or 810 KAR 8:040, was present in the sample.

(a) For the drugs, medications, or substances listed in this administrative regulation or 810 KAR 8:020 for which an established concentration level is provided, it shall be necessary to have a finding in excess of the established concentration level as provided for the finding to be considered a positive finding.

(b) Positive finding also includes:

1. Substances present in the horse in excess of concentrations at which the substances could occur naturally; and

2. Substances foreign to a horse that cause interference with testing procedures.

(7) "Primary sample" means the primary sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the commission laboratory.

(8) "Split sample" means the split sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the split sample laboratory.

(9) "Split sample laboratory" means the laboratory approved by the commission to test the split sample portion of the biologic specimen from horses taken under the supervision of the commission veterinarian.

(10) "Test barn" means a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for obtaining biologic specimens for testing.

(11) "Therapeutic AAS" means boldenone, nandrolone, or testosterone.

Section 2. Use of Medication. (1) Therapeutic measures and medication necessary to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.

(2) Except as expressly permitted in 810 KAR Chapter 8, while participating in a race (betting or non-betting), qualifying race, or time trial, it shall be a violation for a horse to carry in its body any drug, medication, substance, or metabolic derivative, that:

(a) Is foreign to the horse; or

(b) Might mask the presence of a prohibited drug, or obstruct testing procedures.

(3) It shall be a violation for therapeutic medications to be present in excess of established threshold concentrations set forth in this administrative regulation or in 810 KAR 8:020. The thresholds for permitted NSAIDs are set forth in Section 8 of this administrative regulation.

(4) Except as provided by paragraphs (a) and (b) of this subsection, it shall be a violation for a substance to be present in a horse in excess of a concentration at which the substance

could occur naturally. It shall be the responsibility of the commission to prove that the substance was in excess of normal concentration levels.

(a) Gamma amino butyric acid shall not be present in a concentration greater than 110 nanograms per milliliter in serum or plasma.

(b) Cobalt shall not be present in a concentration greater than twenty-five (25) parts per billion in serum or plasma.

(5) It shall be prima facie evidence that a horse was administered and carried, while running in a race (betting or non-betting), qualifying race, or time trial, a drug, medication, substance, or metabolic derivative thereof prohibited by this section if:

(a) A biologic specimen from the horse was taken under the supervision of the commission veterinarian promptly after a horse ran in a race (betting or non-betting), qualifying race, or time trial; and

(b) The commission laboratory presents to the commission a report of a positive finding.

(6) The commission shall utilize the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule as provided in 810 KAR 8:020, for classification of drugs, medications, and substances violating this administrative regulation. Penalties for violations of this administrative regulation shall be implemented in accordance with 810 KAR 8:030.

Section 3. Treatment Restrictions. (1) Except as provided in Section 4 of this administrative regulation, a person other than a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall not administer by injection a prescription or

controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the commission.

(2) The only injectable substance allowed within twenty-four (24) hours prior to post time of the race in which the horse is entered shall be furosemide, as set forth in Section 6 of this administrative regulation.

(3) Except as provided by subsection (5) of this section, a person other than a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall not possess a hypodermic needle, syringe, or injectable of any kind at a location under the jurisdiction of the commission.

(4) A veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall use only single-use disposable needles and syringes, and shall dispose of them in a container approved by the commission veterinarian.

(5) If a person regulated by the commission has a medical condition that makes it necessary to possess a needle and syringe at a location under the jurisdiction of the commission, the person shall request prior permission from the stewards or judges and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The stewards or judges may grant approval for a person to possess and use a needle and syringe at a location under the jurisdiction of the commission, but may also establish necessary restrictions and limitations.

(6) A commission employee may accompany a veterinarian at a location under the jurisdiction of the commission and take possession of a syringe, needle, or other device used to administer a substance to a horse.

Section 4. Certain Permitted Substances. Liniments, antiseptics, antibiotics, ointments, leg paints, washes, and other products commonly used in the daily care of horses may be administered by a person, other than a licensed veterinarian if:

(1) The treatment does not include any drug, medication, or substance otherwise prohibited by this administrative regulation;

(2) The treatment is not injected; and

(3) The person is acting under the direction of a licensed trainer or veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission.

Section 5. Anti-ulcer Medications. The following anti-ulcer medications may be administered orally, at the dosage stated in this section, up to twenty-four (24) hours prior to post time of the race in which the horse is entered:

(1) Cimetidine (Tagamet): eight (8) to twenty (20) milligrams per kilogram;

(2) Omeprazole (Gastrogard): two and two-tenths (2.2) grams;

(3) Ranitidine (Zantac): eight (8) milligrams per kilogram; and

(4) Sucralfate: two (2) to four (4) grams.

Section 6. Furosemide Use on Race Day. (1) Furosemide may be administered, in accordance with this section, to a horse that is entered to compete in a race, qualifying race, or time trial.

(2)(a) Only the commission veterinarian shall administer furosemide prior to a race, qualifying race, or time trial.

(b) If the commission veterinarian is unavailable to administer furosemide to a horse prior to a race, qualifying race, or time trial, the commission shall approve a licensed veterinarian to

perform the administration. The approved licensed veterinarian shall agree to comply with all of the applicable administrative regulations regarding the administration of furosemide on race day.

(c) If the furosemide is administered by an approved licensed veterinarian, the administering veterinarian shall provide a written report to the commission veterinarian no later than two (2) hours prior to post time of the race in which the horse receiving the furosemide is competing.

(3) Furosemide may be used under the circumstances established in this subsection.

(a) Furosemide shall be administered at a location under the jurisdiction of the commission where the horse is scheduled to race.

(b) Furosemide shall be administered by a single intravenous injection, not less than four (4) hours prior to post time for the race, qualifying race, or time trial in which the horse is entered.

(c) The furosemide dosage administered shall not exceed 500 milligrams, nor be less than 150 milligrams.

(d) The specific gravity of a post-race urine sample shall not be below 1.010. If the specific gravity of the post-race urine sample is determined to be below 1.010, a quantification of furosemide in serum or plasma shall be performed by the commission laboratory. If a horse fails to produce a urine specimen, the commission laboratory shall perform a quantification of furosemide in the serum or plasma sample. Concentrations above 100 nanograms of furosemide per milliliter of serum or plasma shall constitute a violation of this section.

(4) The initial cost of administering the furosemide shall be twenty (20) dollars per administration. The commission shall monitor the costs associated with administering furosemide and consult with industry representatives to determine if the cost should be lowered based on prevailing veterinarian services and supplies. The commission shall maintain records documenting the basis for its determination, and if the cost is determined to be less than twenty (20) dollars per administration, then the commission shall lower the cost accordingly. The cost shall be prominently posted in the racing office.

Section 7. Furosemide Eligibility. (1)(a) A horse shall be eligible to race with furosemide if the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interests to race with furosemide. Notice that a horse eligible to receive furosemide will race with or without furosemide shall be made at the time of entry to ensure public notification, including publication in the official racing program.

(b) It shall constitute a violation of this administrative regulation if notice is made pursuant to this section that a horse will race with furosemide, and the post-race urine, serum, or plasma does not show a detectable concentration of furosemide in the post-race urine, serum, or plasma.

(2) After a horse has been determined to no longer be required to receive furosemide, the horse shall not be eligible to receive furosemide unless the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interest to race with furosemide and the licensed trainer or a licensed veterinarian complies with the requirements of this section.

Section 8. Permitted Non-steroidal Anti-inflammatory Drugs (NSAIDs). (1) One (1) of the following NSAIDs may be used by a single intravenous injection not less than twenty-four (24) hours prior to post time for the race in which the horse is entered if the concentration in the horse's specimen does not exceed the following levels when tested post-race:

(a) Phenylbutazone - not to exceed two (2.0) micrograms per milliliter of serum or plasma;

(b) Flunixin - not to exceed twenty (20) nanograms per milliliter of serum or plasma; and

(c) Ketoprofen - not to exceed two (2) nanograms per milliliter of serum or plasma.

(2) NSAIDS, including the permitted NSAIDs, shall not be administered within twenty-four (24) hours prior to post time for the race in which the horse is entered. However, as provided in 810 KAR 8:020, the recommended withdrawal guideline for flunixin is thirty-two (32) hours prior to post time for the race in which the horse is entered.

(3)(a) The use of any NSAID other than the permitted NSAIDs, and the use of multiple permitted NSAIDs shall be discontinued at least forty-eight (48) hours prior to post time for the race in which the horse is entered.

(b) A finding of phenylbutazone below a concentration of three tenths (0.3) microgram per milliliter of serum or plasma shall not constitute a violation of this section.

(c) A finding of flunixin below a concentration of three (3) nanograms per milliliter of serum or plasma shall not constitute a violation of this section.

(d) A finding of ketoprofen below a concentration of one (1) nanogram per milliliter of serum or plasma shall not constitute a violation of this section.

Section 9. Anabolic Steroids. (1) An exogenous AAS shall not be present in a horse that is racing. The detection of an exogenous AAS or metabolic derivative in a post-race sample shall constitute a violation of this administrative regulation.

(2) The detection in a post-race sample of an endogenous AAS or metabolic derivative where the concentration of the AAS or metabolic derivative exceeds naturally occurring physiological levels shall constitute a violation of this administrative regulation. The following shall be deemed to be naturally occurring physiological levels:

(a) Boldenone:

1. In male horses other than geldings, free and conjugated boldenone fifteen (15) nanograms per milliliter in urine or free boldenone twenty-five (25) picograms per milliliter in serum or plasma; and

2. In geldings and female horses, free and conjugated boldenone one (1) nanogram per milliliter in urine or free boldenone twenty-five (25) picograms per milliliter in serum or plasma.

(b) Nandrolone:

1. In geldings, free and conjugated nandrolone one (1) nanogram per milliliter in urine or free nandrolone twenty five (25) picograms per milliliter in serum or plasma;

2. In fillies and mares, free and conjugated nandrolone one (1) nanogram per milliliter in urine or free nandrolone twenty five (25) picograms per milliliter in serum or plasma; and

3. In male horses other than geldings, forty-five (45) nanograms per milliliter of metabolite, 5α-estrane-3β, 17α-diol in urine or a ratio in urine of 5α-estrane-3β, 17α-diol to 5α-estrene-3β, 17α-diol of >1:1.

(c) Testosterone:

1. In geldings, free and conjugated testosterone twenty (20) nanograms per milliliter in urine or free testosterone one hundred (100) picograms per milliliter in serum or plasma; and

2. In fillies and mares (unless in foal), free and conjugated testosterone fifty-five (55) nanograms per milliliter in urine or free testosterone one hundred (100) picograms per milliliter in serum or plasma.

(3) The gender of the horse from which a post-race biologic specimen is collected shall be identified to the commission veterinarian and the testing laboratory.

Section 10. Test Barn. (1), A licensed association shall provide and maintain a test barn on association grounds.

(2) The test barn shall be a fenced enclosure sufficient: (a) in size and facilities to accommodate the stabling of horses temporarily detained for the taking of biologic specimens; and

(b) In structural design to prevent entry by unauthorized persons.

(3) The test barn shall be under the supervision and control of the commission chief veterinarian, and no access to individuals other than commission personnel shall be permitted unless with the permission of the commission chief veterinarian. If association personnel require immediate access to the test barn due to fire or other emergency, the association shall report the access to commission officials as soon as possible after the emergency.

Section 11. Sample Collection, Testing and Reporting. (1) Sample collection shall be done in accordance with the procedures provided in this administrative regulation, 810 KAR 8:060 and under the instructions provided by the commission veterinarian.

(2) The commission veterinarian, in consultation with the commission laboratory shall determine a minimum sample requirement which shall be uniform for each horse and which shall be separated into primary and split samples.

(3) An owner or trainer may request that a split sample be tested by a split sample laboratory approved by the Commission.

(4) The cost of testing under subsection (3) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

(5)(a) Stable equipment other than that necessary for washing and cooling out a horse shall not be permitted in the test barn.

(b) Buckets and water shall be furnished by the commission veterinarian.

(c) If a body brace is to be used on a horse, it shall:

1. Be supplied by the trainer; and

2. Applied only with the permission and in the presence of the commission veterinarian or his designee.

(d) A licensed veterinarian may attend to a horse in the test barn only with the permission of and in the presence of the commission veterinarian or his designee.

(6) Within five (5) business days of receipt of notification by the commission laboratory of a positive finding, the stewards and judges shall notify the owner and trainer orally or in writing of the positive finding.

(7) The stewards or judges shall conduct a hearing as soon as possible after the conclusion of an investigation of a positive finding. A person charged with a violation may request a continuance, which the stewards or the judges may grant for good cause shown.

Section 12. Storage and Shipment of Split Samples. (1) Split samples shall be secured and made available for further testing in accordance with the procedures established in this subsection:

(a) Split samples shall be secured in the test barn in the same manner as the primary samples for shipment to the commission laboratory, as addressed in Section 11 of this administrative regulation, until the primary samples are packed and secured for shipment to the commission laboratory. Split samples shall then be transferred to a freezer or refrigerator at a secure location approved and chosen by the commission.

(b) A freezer or refrigerator for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer or refrigerator at all times except as specifically provided by paragraph (c) of this subsection.

(c) A freezer or refrigerator for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples.

(d) A log shall be maintained by the commission veterinarian that shall be used each time a split sample freezer or refrigerator is opened to specify each person in attendance, the purpose for opening the freezer or refrigerator, identification of split samples deposited or removed, the date and time the freezer or refrigerator was opened, the time the freezer or refrigerator was closed, and verification that the lock was secured prior to and after opening of the freezer or refrigerator. A commission veterinarian or his designee shall be present when the freezer or refrigerator is opened.

(e) Evidence of a malfunction of a split sample freezer or refrigerator shall be documented in the log.

(f) The commission shall be considered the owner of a split sample.

(2)(a) A trainer or owner of a horse receiving notice of a positive finding may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to the split sample laboratory. The party requesting the split sample shall select a laboratory solicited and approved by the commission to perform the analysis.

(b) The request shall be made in writing and delivered to the stewards or judges within three (3) business days after the trainer or owner of the horse receives oral or written notice of the positive finding by the commission laboratory.

(c) A split sample so requested shall be shipped as expeditiously as possible.

(3)(a) The owner or trainer requesting testing of a split sample shall be responsible for the cost of the testing, including the cost of shipping.

(b) Failure of the owner, trainer, or a designee to appear at the time and place designated by the commission veterinarian in connection with securing, maintaining, or shipping the split sample shall constitute a waiver of any right to be present during split sample testing procedures.

(c) Prior to shipment of the split sample, the commission shall confirm:

1. That the split sample laboratory has agreed to provide the testing requested;

2. That the split sample laboratory has agreed to send results to the commission; and

3. That arrangements for payment satisfactory to the split sample laboratory have been made.

Section 13. Split Sample Chain of Custody. (1) Prior to opening the split sample freezer or refrigerator, the commission shall provide a split sample chain of custody verification form. The

form to be used shall be the Split Sample Chain of Custody Form. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:

(a) The date and time the sample is removed from the split sample freezer or refrigerator;

(b) The sample number; and

(c) The address where the split sample is to be sent.

(2) A split sample shall be removed from the split sample freezer or refrigerator by a commission employee after notice to the owner, trainer, or designee thereof and a commission-designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the commission. The Split Sample Chain of Custody Form shall be signed by both the owner's representative, if present, and the commission representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(3) The owner, trainer, or designee, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(4) The Split Sample Chain of Custody Form shall be completed and signed by the representative of the commission and the owner, trainer, or designee, if present.

(5) The commission representative shall retain the original Split Sample Chain of Custody Form and provide a copy to the owner, trainer, or designee, if requested.

Section 14. Medical Labeling.

(1) A drug or medication which, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly licensed veterinarian.

(2) A drug or medication shall bear a prescription label which is securely attached and clearly ascribed to show the following:

(a) The name of the product;

(b) The name, address, and telephone number of the veterinarian prescribing or dispensing the product;

(c) The name of the horse for which the product is intended or prescribed;

(d) The dosage, duration of treatment, and expiration date of the prescribed or dispensed product; and

(e) The name of the trainer to whom the product was dispensed.

Section 15. Trainer Responsibility. (1) In the absence of substantial evidence to the contrary, a trainer shall be responsible for the condition of a horse in his or her care.

(2) In the absence of substantial evidence to the contrary, a trainer shall be responsible for the presence of a prohibited drug, medication, substance, or metabolic derivative, including permitted medication in excess of the maximum allowable concentration, in a horse in his or her care.

(3) A trainer shall prevent the administration of a drug, medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

(4) A trainer whose horse has been claimed shall remain responsible for a violation of this administrative regulation regarding that horse's participation in the race in which the horse is claimed.

(5) A trainer shall be responsible for:

(a) Maintaining the assigned stable area in a clean, neat, and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition, and safety of horses in his or her care;

(d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and the commission veterinarian if a posterior digital neurectomy (heel nerving) is performed on a horse in his or her care and ensuring this fact is designated on its certificate of registration;

(f) Promptly reporting to the racing secretary the name of a mare in his or her care that has been bred and is entered to race;

(g) Promptly notifying the commission veterinarian of a reportable disease or communicable illness in a horse in his or her care;

(h) Promptly reporting the serious injury or death of a horse in his or her care at a location under the jurisdiction of the commission to the judges and the commission veterinarian and ensuring compliance with Section 22 of this administrative regulation and 810 KAR 4:010, Section 14, governing postmortem examinations;

(i) Maintaining a medication record and medication status of horses in his or her care;

(j) Promptly notifying the stewards or judges and the commission veterinarian if the trainer has knowledge or reason to believe that there has been an administration to a horse of

a drug, medication, or other substance prohibited by this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20 of this administrative regulation;

(k) Ensuring the fitness of every horse in his or her care to perform creditably at the distance entered;

(l) Ensuring that every horse he or she has entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed by 810 KAR 2:010 Section 4(1)(l);

(m) Ensuring proper bandages, equipment, and shoes;

(n) Ensuring the horse's presence in the paddock at the time prescribed by racing officials before the race in which the horse is entered;

(o) Personally attending in the paddock and supervising the saddling or preparation of a horse in his or her care, unless an assistant trainer fulfills these duties or the trainer is excused by the judges or stewards pursuant to 810 KAR 3:040, Section 3(4); and

(p) Attending the collection of a biologic specimen taken from a horse in his or her care or delegating a licensed employee or the owner to do so.

Section 16. Licensed Veterinarians. (1) A veterinarian licensed by the commission and practicing at a location under the jurisdiction of the commission shall be considered under the supervision of the commission veterinarian and the stewards or judges.

(2) A veterinarian shall report to the stewards, judges or the commission veterinarian a violation of this administrative regulation by a licensee.

Section 17. Veterinary Reports. (1) A veterinarian who treats a horse at a location under the jurisdiction of the commission shall submit a Veterinary Report of Horses Treated to be Submitted Daily form to the commission veterinarian containing the following information:

(a) The name of the horse treated;

(b) The type and dosage of drug or medication administered or prescribed;

(c) The name of the trainer of the horse;

(d) The date and time of treatment; and

(e) Other pertinent treatment information requested by the commission veterinarian.

(2) The Veterinary Report of Horses Treated to be Submitted Daily form shall be signed by the treating practicing veterinarian.

(3) The Veterinary Report of Horses Treated to be Submitted Daily form shall be on file not later than the time prescribed on the next race day by the commission veterinarian.

(4) The Veterinary Report of Horses Treated to be Submitted Daily form shall be confidential, and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the stewards, judges or the commission, or to the trainer or owner of record at the time of treatment.

(5) A timely and accurate filing of a Veterinary Report of Horses Treated to be Submitted Daily form by the veterinarian or his designee that is consistent with the analytical results of a positive test reported by the commission laboratory may be used as a mitigating factor in determining the appropriate penalties pursuant to 810 KAR 8:030.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication, or substance prohibited under this administrative regulation

or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20 of this administrative regulation shall report this fact immediately to the commission veterinarian or to the stewards or judges.

(7) A practicing veterinarian shall maintain records of all horses treated and of all medications sold or dispensed. The records shall include:

(a) The name of the horse;

(b) The trainer of the horse;

(c) The date, time, amount, and type of medication administered;

(d) The drug or compound administered;

(e) The method of administration; and

(f) The diagnosis.

(8) The records shall be retained for at least sixty (60) days after the horse has raced and shall be available for inspection by the commission.

Section 18. Veterinarian's List. (1) The commission veterinarian shall maintain a list of horses determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.

(2) A horse may be removed from the veterinarian's list when, in the opinion of the commission veterinarian, the horse is capable of competing in a race.

(3) The commission shall maintain a bleeder list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout as observed by the commission veterinarian.

(4) Every horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to participate in a race (betting or non-betting), qualifying race, time trial, or for the following time periods:

(a) First incident - fourteen (14) days;

(b) Second incident within a 365-day period - thirty (30) days;

(c) Third incident within a 365-day period - 180 days; and

(d) Fourth incident within a 365-day period - barred from racing for life.

(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be the first day of the recovery period.

(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as defined in this section.

Section 19. Distribution of Purses, Barn Searches, and Retention of Samples. (1) For all races, purse money in thoroughbred and other flat racing shall be paid or distributed pursuant to the process provided in 810 2:070, Section 29(3), and in standardbred racing, no later than twenty-four (24) hours after notice from the commission that a final laboratory report has been issued.

(2) The distribution of purse money prior to the issuance of a final laboratory report shall not be considered a finding that no prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(3) After the commission laboratory issues a positive finding the executive director of the commission or the stewards or judges may authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the positive finding.

(4) If the purse money has been distributed, the stewards or judges shall order the money returned immediately to the association upon notification from the commission laboratory that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(5) At the conclusion of testing by the commission laboratory and split sample laboratory, the remaining portion of the samples at the commission laboratory and split samples remaining at the test barn may be retained at a proper temperature at a secure facility approved and chosen by the commission. If a report indicating a positive finding has been issued, the commission shall use its best reasonable efforts to retain any remaining portion of the sample until legal proceedings have concluded. The commission may freeze samples.

Section 20. Other Prohibited Practices Constituting a Violation of this Administrative Regulation. (1) A drug, medication, substance, or device shall not be possessed or used by a licensee, or his designee or agent, within a non-public area at a location under the jurisdiction of the commission:

(a) The use of which may endanger the health and welfare of the horse; or

(b) The use of which may endanger the safety of the rider or driver.

(2) Without the prior permission of the commission or its designee, a drug, medication, or substance that has never been approved by the United States Food and Drug Administration (USFDA) for use in humans or animals shall not be possessed or used at a location under the jurisdiction of the commission. The commission shall determine whether to grant prior permission after consultation with the Equine Drug Research Council.

(3) The following blood-doping agents shall not be possessed or used at a location under the jurisdiction of the commission:

(a) Erythropoietin;

(b) Darbepoietin;

(c) Oxyglobin;

(d) Hemopure; or

(e) Any substance that abnormally enhances the oxygenation of body tissue.

(4) A treatment, procedure, or therapy shall not be practiced, administered, or applied which may:

(a) Endanger the health or welfare of a horse; or

(b) Endanger the safety of a rider or driver.

(5) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be used unless the conditions established in this subsection are met.

(a) A treated horse shall not race for a minimum of ten (10) days following treatment.

(b) A veterinarian licensed to practice by the commission shall administer the treatment.

(c) The commission veterinarian shall be notified prior to the delivery of the machine on association grounds.

(d) Prior to administering the treatment, a report shall be submitted by the veterinarian administering the treatment to the commission veterinarian on the Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy

(6) Other than furosemide, an alkalizing substance that could alter the serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse shall not be used within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(7) Without the prior permission of the commission veterinarian or his designee, based on standard veterinary practice for recognized conditions, a nasogastric tube which is longer than six (6) inches shall not be used for the administration of any substance within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(8) A serum or plasma total carbon dioxide (TCO2) level shall not exceed thirty-seven (37.0) millimoles per liter; except, a violation shall not exist if the TCO2 level is found to be normal for the horse following the quarantine procedure set forth in Section 21 of this administrative regulation.

(9) A blood gas machine shall not be possessed or used by a person other than an authorized representative of the commission at a location under the jurisdiction of the commission.

(10) A shock wave therapy machine or radial pulse wave therapy machine shall not be possessed or used by anyone other than a veterinarian licensed by the commission at a location under the jurisdiction of the commission.

Section 21. TCO_2 Testing and Procedures. (1)(a) The stewards, judges, or commission veterinarian may order the pre-race or post-race collection of blood specimens from a horse to determine the total carbon dioxide concentration in the serum or plasma of the horse. The winning horse and other horses, as selected by the stewards or judges, may be tested in each race to determine if there has been a violation of this administrative regulation.

(b) Pre-race sampling shall be done at a reasonable time, place, and manner directed by the chief state steward in consultation with the commission veterinarian.

(c) A specimen consisting of at least two (2) blood tubes shall be taken from a horse to determine the TCO_2 concentration in the serum or plasma of the horse. If the commission laboratory determines that the TCO_2 level exceeds thirty-seven (37.0) millimoles per liter plus the laboratory's measurement of uncertainty, the executive director of the commission shall be informed of the positive finding.

(d) Split sample testing for TCO_2 may be requested by an owner or trainer in advance of the collection of the specimen by the commission veterinarian; however, the collection and testing of a split sample for TCO_2 testing shall be done at a reasonable time, place, and manner directed by the commission veterinarian.

(e) The cost of split sample testing, including the cost of shipping, shall be borne by the owner or the trainer.

(2)(a) If the level of TCO_2 is determined to exceed thirty-seven (37.0) millimoles per liter plus the laboratory's measurement of uncertainty and the licensed owner or trainer of the horse certifies in writing to the stewards or judges within twenty-four (24) hours after the notification of the test result that the level is normal for that horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is requested, the licensed association shall make guarded quarantine available for that horse for a period of time to be determined by the steward or judges, but in no event for more than seventy-two (72) hours.

(b) The expense for maintaining the quarantine shall be borne by the owner or trainer.

(c) During quarantine, the horse shall be retested periodically by the commission veterinarian.

(d) The horse shall not be permitted to race during a quarantine period, but it may be exercised and trained at times prescribed by the licensed association and in a manner that allows monitoring of the horse by a commission representative.

(e) During quarantine, the horse shall be fed only hay, oats, and water.

(f) If the commission veterinarian is satisfied that the horse's level of TCO_2, as registered in the original test, is physiologically normal for that horse, the stewards or judges:

1. Shall permit the horse to race; and

2. May require repetition of the quarantine procedure set forth in paragraphs (a) through (f) of this subsection to reestablish that the horse's TCO_2 level is physiologically normal.

Section 22. Postmortem Examination. (1) A horse that dies or is euthanized on the grounds of a licensed association or training center under the jurisdiction of the commission shall undergo a postmortem examination at the discretion of the commission and at a facility designated by the commission, through its designee, as provided in 810 KAR 4:010, Section 14.

(2) The commission shall bear the cost of an autopsy that is required by the commission.

(3) The presence of a prohibited drug, medication, substance, or metabolic derivative thereof in a specimen collected during the postmortem examination of a horse may constitute a violation of this administrative regulation.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Veterinary Report of Horses Treated to be Submitted Daily", KHRC 8-010-1;

(b) "Split Sample Chain of Custody Form", KHRC 8-010-2; and

(c) "Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy", KHRC 8-010-3.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the commission's Web site at http://khrc.ky.gov.

810 KAR 8:010

READ AND APPROVED:

Franklin S. Kling, Jr., Chairman
Kentucky Horse Racing Commission

11/12/18
Date

K. Gail Russell, Acting Secretary
Public Protection Cabinet

11/13/18
Date

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 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, KY 40511
Phone: (859) 246-2040
Facsimile: (859) 246-2039
Email: John.Forgy@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No.: 810 KAR 8:010
Contact Person: John L. Forgy, General Counsel, Kentucky Horse Racing Commission; Telephone: (859) 246-2040; Email: John.Forgy@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for pre- and post-race testing at licensed racing associations in the Commonwealth. The regulation sets forth specific prohibitions concerning medications, establishes the primary and split sample collection process and notification requirements, sets forth the trainer responsibility rule, establishes the veterinarian's list, contains provisions concerning the veterinary and medical labeling, and sets forth the procedures concerning search and seizure on association grounds.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly establish requirements and prohibitions concerning the use of medications during race meetings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.240(2) authorizes 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 horses participating in a race. This administrative regulation establishes the requirements, prohibitions, and procedures pertaining to the use of medications on racing days during horse race meetings in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that medications are used appropriately on racing days and in a manner that is consistent with the integrity of racing.

(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: The Kentucky Horse Racing Commission is affected by this administrative regulation. In addition, Kentucky's licensed thoroughbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the use of medication in horse racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is 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: Participants in horse racing, and especially owners, trainers and veterinarians, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to the use of medication in horse racing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No new costs are anticipated to comply with this administrative regulation, as Kentucky's licensees have operated in accordance with these requirements for many years.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

(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 regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky's racing associations are required by KRS 230.240(2)

to pay for the cost of testing for prohibited medications. The Kentucky Horse Racing Commission covers other costs of implementing and enforcing this administrative regulation.

(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 are funding are 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? (Explain why tiering was or was not used.) Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No.: 810 KAR 8:010
Contact Person: John L. Forgy, General Counsel, Kentucky Horse Racing Commission; Telephone: (859) 246-2040; Email: John.Forgy@ky.gov

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. KRS 230.215, 230.225, 230.240, 230.260, KRS 230.290, KRS 230.300.

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 for the first year.

(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 for subsequent years.

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

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

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

(1) "Veterinary Report of Horses Treated to be Submitted Daily", KHRC 8-010-1; is the one (1) page form to document treatments to a horse by a veterinarian.

(2) "Split Sample Chain of Custody Form", KHRC 8-010-2; is the one (1) page form that accompanies a split sample for submission.

(3) "Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy", KHRC 8-010-3; is the one (1) page form to document the use of wave therapy on a horse by a veterinarian.