

1 PUBLIC PROTECTION CABINET

2 Kentucky Horse Racing Commission

3 (Amendment)

4 810 KAR 8:040. Out-of-competition testing.

5 RELATES TO: KRS 230.215, 230.225(5), 230.240, 230.260, 230.290, 230.300, 230.310,  
6 230.320, 230.370

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

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the  
9 authority to regulate conditions under which horse racing shall be conducted in Kentucky. KRS  
10 230.240(2) requires the commission to promulgate administrative regulations restricting or  
11 prohibiting the use and administration of drugs or stimulants or other improper acts to horses  
12 prior to the horse participating in a race. This administrative regulation establishes new sampling  
13 and testing procedures for prohibited substances, and establishes penalties for individuals found  
14 to be in violation of this administrative regulation.

15 Section 1. Definitions.

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

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

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

19 (a) Pre-race TCO<sub>2</sub> testing; and

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

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

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

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

6 Section 2. Prohibited Substances and Practices.

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

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

20 (3) Therapeutic substances not otherwise prohibited by this administrative regulation  
21 may be used if the substances:

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

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

5 (4) Compounded medications not otherwise prohibited by this administrative regulation  
6 may be used if the medications:

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

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

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

13 1. Exogenous AAS, such as ~~including~~: 1-androstenediol (5 $\alpha$ -androst-1-ene-3 $\beta$ ,17 $\beta$ -diol);  
14 1-androstenedione (5 $\alpha$ -androst-1-ene-3,17-dione); bolandiol (estr-4-ene-3 $\beta$ ,17 $\beta$ -diol);  
15 bolasterone; boldenone; boldione (androsta-1,4-diene-3,17-dione); calusterone; clostebol  
16 danazol (ox-azolopregna-4-en-20-yn-17 $\alpha$ -ol); dehydrochlormethyltestosterone (4-chloro-17 $\beta$ -  
17 hydroxy-17 $\alpha$ -methylandrosta-1,4-dien-3-one); desoxymethyltestosterone (17 $\alpha$ -ethyl-5 $\alpha$ -  
18 androst-2-en-17 $\beta$ -ol); drostanolone; ethylestrenol (19-norpregna-4-en-17 $\alpha$ -ol);  
19 fluoxymesterone; formebolone; furazabol (17 $\alpha$ -methyloxadiazolo-5 $\alpha$ -androstan-17 $\beta$ -ol);  
20 gestrinone; 4-hydroxy-testosterone (4,17 $\beta$ -dihydroxyandrost-4-en-3-one); mestanolone;  
21 mesterolone; metandienone (17 $\beta$ -hydroxy-17 $\alpha$ -methylandrosta-1,4-dien-3-one); metenolone;  
22 methandriol; methasterone (17 $\beta$ -hydroxy-2 $\alpha$ ,17 $\alpha$ -dimethyl-5 $\alpha$ -androstan-3-one);

1 methyl-dienolone (17 $\beta$ -hydroxy-17 $\alpha$ -methyl-estra-4,9-dien-3-one); methyl-1-testosterone (17 $\beta$ -  
2 hydroxy-17 $\alpha$ -methyl-5 $\alpha$ -androst-1-en-3-one); methyl-nortestosterone (17 $\beta$ -hydroxy-17 $\alpha$ -  
3 methyl-estr-4-en-3-one); methyl-testosterone; metribolone (methyl-trienolone, 17 $\beta$ -hydroxy-17 $\alpha$ -  
4 methyl-estra-4,9,11-trien-3-one); mibolerone; nandrolone; 19-norandrostenedione (estr-4-ene-  
5 3,17-dione); norboletone; norclostebol; norethandrolone; oxabolone; oxandrolone;  
6 oxymesterone; oxymetholone; prostanazol (17 $\beta$ -1'H-pyrazolo-5 $\alpha$ -androstane); quinbolone;  
7 stanozolol; stenbolone; 1-testosterone (17 $\beta$ -hydroxy-5 $\alpha$ -androst-1-en-3-one);  
8 tetrahydrogestrinone (17-hydroxy-18 $\alpha$ -homo-19-nor-17 $\alpha$ -pregna-4,9,11-trien-3-one); and  
9 trenbolone (17 $\beta$ -hydroxy-estr-4,9,11-trien-3-one); and

10 2. Endogenous AAS or their synthetic esters if administered exogenously: androstenediol  
11 (androst-5-ene-3 $\beta$ ,17 $\beta$ -diol); androstenedione (androst-4-ene-3,17-dione); dihydrotestosterone  
12 (17 $\beta$ -hydroxy-5 $\alpha$ -androstan-3-one); prasterone (dehydroepiandrosterone, DHEA, 3 $\beta$ -  
13 hydroxyandrost-5-en-17-one); testosterone; and their metabolites and isomers, including but  
14 not limited to: 5 $\alpha$ -androstan-3 $\alpha$ ,17 $\alpha$ -diol; 5 $\alpha$ -androstan-3 $\alpha$ ,17 $\beta$ -diol; 5 $\alpha$ -androstan-3 $\beta$ ,17 $\alpha$ -  
15 diol; 5 $\alpha$ -androstan-3 $\beta$ ,17 $\beta$ -diol; 5 $\beta$ -androstan-3 $\alpha$ , 17 $\beta$ -diol, androst-4-ene-3 $\alpha$ ,17 $\alpha$ -diol;  
16 androst-4-ene-3 $\alpha$ ,17 $\beta$ -diol; androst-4-ene-3 $\beta$ ,17 $\alpha$ -diol; androst-5-ene-3 $\alpha$ ,17 $\alpha$ -diol; androst-5-  
17 ene-3 $\alpha$ ,17 $\beta$ -diol; androst-5-ene-3 $\beta$ ,17 $\alpha$ -diol; 4-androstenediol (androst-4-ene-3 $\beta$ ,17 $\beta$ -diol); 5-  
18 androstenedione (androst-5-ene-3,17-dione); androsterone (3 $\beta$ -hydroxy-5 $\alpha$ -androstan-17-one);  
19 epidihydrotestosterone; epitestosterone; etiocholanolone; 7 $\alpha$ -hydroxy-DHEA; 7 $\beta$ -hydroxy-  
20 DHEA; 7-keto-DHEA; 19-norandrosterone; 19-noretiocholanolone.

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

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

3           2. The administration is:

4           a. Performed pursuant to a valid veterinary prescription;

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

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

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

10          4. The horse is placed on the Veterinarian's List for six (6) months after the last  
11 administration of an anabolic steroid or agent.

12          (6)(a) Except as provided in paragraph (b) of this subsection, the following anabolic agents  
13 shall be prohibited:

14          1. Clenbuterol;

15          2. Selective androgen receptor modulators (SARMs);

16          3. Ractopamine;

17          4. Tibolone;

18          5. Zeranol; and

19          6. Zilpaterol.

20          (b) Clenbuterol may be administered if the treatment is:

21          1. Pursuant to a valid veterinary prescription; ~~and~~

1           2. Reported by the administering veterinarian to the commission no later than 24 hours  
2 after administration or dispensing of the medication; and[-]

3           3. Otherwise compliant with 810 KAR 8:010, Section 10.

4           (7) The following substances shall be prohibited:

5           (a) Erythropoiesis-Stimulating Agents (ESAs), such as [~~including~~] darbepoetin (dEPO);  
6 erythropoietins (EPO); EPO-Fc; EPOmimetic peptides (EMP), e.g., CNTO 530 and peginesatide;  
7 and methoxypolyethylene glycol-epoetin beta (CERA);

8           (b) Non-erythropoietic EPO-Receptor agonists, such as [~~including~~] ARA-290, asialo EPO  
9 and carbamylated EPO; and

10          (c) Hypoxia-inducible factor (HIF) stabilizers, such as [~~including~~] cobalt (if detected at  
11 concentrations in excess of the threshold prescribed in 810 KAR 8:010, Section 2(4)(b)), and  
12 roxadustat (FG-4592); and HIF activators, (e.g., argon, xenon).

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

15          (b) Chorionic Gonadotropin (CG) and Luteinizing Hormone (LH) may be used in male  
16 horses if:

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

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

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

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

- 1           1. Pursuant to a valid veterinary prescription; and  
2           2. Reported by the administering veterinarian to the commission no later than twenty-  
3 four (24) hours after administration or dispensing of the medication by the veterinarian.

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

8           (d) Venoms and toxins from sources, such as ~~[including]~~ snails, snakes, frogs, and bees  
9 and their synthetic analogues, such as ~~[including]~~ ziconotide, shall be prohibited.

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

16          (10) Platelet rich plasma (PRP) and autologous conditioned plasma (IRAP) may be used if  
17 the treatment is:

- 18           (a) Pursuant to a valid veterinary prescription; and  
19           (b) Reported to the commission's representative at the time of sampling if administered  
20 within the preceding twenty-four (24) hours.

21          (11) All beta-2 agonists, such as ~~[including]~~ all optical isomers (i.e., d- and l-) where  
22 relevant, shall be prohibited.

1 (12) Clenbuterol and albuterol may be used if the treatment is:

2 (a) Pursuant to a valid veterinary prescription; ~~and~~

3 (b) Reported by the administering veterinarian to the commission no later than twenty-  
4 four (24) hours after administration or dispensing of the medication by the veterinarian; and[-]

5 (c) Otherwise compliant with 810 KAR 8:010, Section 10.

6 (13)(a) Except as established in paragraphs (b) and (c) of this subsection, hormone and  
7 metabolic modulators shall be prohibited such as ~~[including]~~:

8 1. Aromatase inhibitors, such as ~~[including]~~ aminoglutethimide, anastrozole, androsta-  
9 1,4,6-triene-3,17-dione (androstatrienedione), 4-androstene-3,6,17 trione (6-oxo), exemestane,  
10 formestane, letrozole, testolactone;

11 2. Selective estrogen receptor modulators (SERMs), such as ~~[including]~~ raloxifene,  
12 tamoxifen, toremifene;

13 3. Other anti-estrogenic substances, such as ~~[including]~~ clomiphene, cyclofenil,  
14 fulvestrant;

15 4. Agents modifying myostatin function(s), such as ~~[including]~~ myostatin inhibitors;

16 5. Activators of the AMP-activated protein kinase (AMPK), such as ~~[including]~~ 5-  
17 Aminoimidazole-4-carboxamide ribonucleotide (AICAR); and Peroxisome Proliferator Activated  
18 Receptor  $\delta$  (PPAR $\delta$ ) agonists such as ~~[including]~~ GW 1516;

19 6. Insulins;

20 7. Trimetazidine; and

21 8. Thyroxine, and thyroid modulators/hormones such as ~~[including]~~ T4  
22 (tetraiodothyronine/thyroxine), T3 (triiodothyronine), or combinations thereof.



1 (b) Thyroxine (T4) may be used:

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

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

5 (c) Altrenogest may be used in fillies and mares if the treatment is pursuant to a valid  
6 veterinary prescription. Altrenogest may be used is permitted in intact males if the treatment is:

7 1. Pursuant to a valid veterinary prescription; and

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

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

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

17 1. Pursuant to a valid veterinary prescription; and

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

20 (c) Other diuretics, including those established in paragraph (a) above, may be  
21 administered in an emergency if the treatment is:

22 1. Pursuant to a valid veterinary prescription; and

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

2           (19) Masking agents, such as ~~[including]~~ desmopressin, plasma expanders (such as  
3 ~~[including]~~ glycerol; intravenous administration of albumin, dextran, and hydroxyethyl starch),  
4 and probenecid, shall be prohibited.

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

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

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

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

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

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

20           (25) Mesenchymal stem cells may be used for treatment of musculoskeletal disorders, if  
21 the treatment is:

- 1           1. Entered by the veterinarian in the horse's medical record, which record shall be made  
2 available to a designee of the commission upon request;
- 3           2. Pursuant to a valid veterinary prescription; and
- 4           3. Reported to the commission's representative at the time of sampling.

5           Section 3. Out-of-Competition Testing.

6           (1) Any horse eligible to race in Kentucky shall be subject to testing without advance  
7 notice for the substances specified in Section 2 of this administrative regulation. A horse shall be  
8 presumed eligible to race in Kentucky if:

- 9           (a) It is under the care, custody, or control of a trainer licensed by the commission;
- 10           (b) It is owned by an owner licensed by the commission;
- 11           (c) It is nominated to a race at an association licensed pursuant to KRS 230.300;
- 12           (d) It has raced at an association licensed pursuant to KRS 230.300 within the previous  
13 twelve (12) calendar months;
- 14           (e) It is stabled on the grounds of an association licensed pursuant to KRS 230.300 or a  
15 training facility subject to the jurisdiction of the commission; or
- 16           (f) It is nominated to participate in the Kentucky Thoroughbred Development Fund, the  
17 Kentucky Standardbred Development Fund, or the Kentucky quarter horse, paint horse,  
18 Appaloosa and Arabian Development Fund.

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

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

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

4 (b) Making the horse available for the collection of the specimen at a place designated by  
5 the commission veterinarian, or his or her designee; and

6 (c) Observing the collection of the specimen.

7 1. If the owner, trainer or their authorized designee, is not available to observe the  
8 collection of the specimen, the collection shall be deferred until the trainer, owner, or their  
9 authorized designee[,] becomes reasonably available, but the collection shall occur no later than  
10 six (6) hours after notice of intent to collect a specimen from a horse is issued by the commission  
11 veterinarian or his or her designee.

12 2. If the collection does not occur within the time provided for in this subsection, any  
13 horse that is designated for testing may be barred from racing in Kentucky and placed on the  
14 veterinarian's list, pursuant to 810 KAR 8:010, Section 18 [~~17~~], and the steward's list or judges'  
15 list, for a period of 180 days and the owner and trainer of the horse may be subject to the  
16 penalties described in Section 8 of this administrative regulation.

17 (4) Responsible persons.

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

20 (b) If the horse is sampled while not on the grounds of a licensed training facility or  
21 racetrack, the owner shall be presumed to be the responsible person unless the owner can

1 establish, by substantial evidence, that another licensed person had accepted the responsibility  
2 for the care, custody, and control of the horse, making that person the responsible person.

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

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

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

#### 15 Section 4. Specimen Collection.

16 (1) A specimen shall be collected from any horse designated by the executive director,  
17 the chief state steward, the presiding judge, or their designee, whether the horse is located in  
18 Kentucky or in another jurisdiction.

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

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

4 (4) At a location other than the grounds of a licensed association or a training facility  
5 under the jurisdiction of the commission, the commission veterinarian, or his or her designee,  
6 shall collect the specimen between the hours of 7 a.m. and 6 p.m., prevailing time, and shall  
7 notify orally or in writing the owner, trainer, or their designee before arriving to collect the  
8 specimen.

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

12 Section 5. Minimum and split samples.

13 The commission veterinarian, in consultation with the official laboratory, shall determine  
14 minimum and split sample requirements as established at 810 KAR 8:010, Section 12 [~~11~~].

15 Section 6. Sample Storage and Testing.

16 (1) Any out of competition sample collected pursuant to this administrative regulation  
17 shall be stored in a temperature controlled unit at a secure location chosen by the commission  
18 until the sample is submitted for testing. The samples shall be secured under conditions  
19 established by the commission veterinarian in accordance with 810 KAR 8:010, Section 12 [~~11~~].

20 (2) The commission is the owner of an out of competition specimen. (3) A trainer or owner  
21 of a horse receiving notice of a report of finding from the commission may request that a split  
22 sample corresponding to the portion of the sample tested by the commission laboratory be sent

1 to a split sample laboratory which has documented its proficiency in detecting the substance  
2 associated with the report of finding and has been approved by the commission.

3 (4) Split samples shall be subject to 810 KAR 8:010, Section 12 [~~11~~], and the chain of  
4 custody of any split sample shall be maintained in accordance with 810 KAR 8:010, Section 13  
5 [~~12~~].

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

8 Section 7. Notice of Violation and Hearing.

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

15 Section 8. Penalty.

16 A trainer, owner, responsible person, or any other individual who violates this  
17 administrative regulation shall be subject to the following penalties:

18 (1) A positive finding of a substance prohibited by this administrative regulation shall be  
19 subject to the penalties for that substance established in 810 KAR 8:010, 810 KAR 8:020, 810 KAR  
20 8:025, and 810 KAR 8:030.

21 (2) If the owner, trainer, or any authorized designee fails to cooperate or otherwise  
22 prevents a horse from being tested, the horse designated for testing shall be barred from racing

1 in Kentucky and placed on the veterinarian's list, pursuant to 810 KAR 8:010, Section 19 [~~18~~], and  
2 the steward's list or judges' list, for 180 days, and the individual or individuals responsible for the  
3 failure to cooperate or prevention of the horse from being tested shall be subject to the penalties  
4 established in subsection (4) of this section.

5 (3) A horse that is barred from racing in Kentucky and placed on the Veterinarian's List  
6 and the steward's list, or judges' list pursuant to subsection (4)(c) or subsection (5) of this section  
7 shall remain barred from racing and shall remain on the veterinarian's list and the steward's list  
8 or judge's list:

9 (a) Upon sale or transfer of the horse to another owner or trainer until the expiration of  
10 180 days; and

11 (b) Until the horse is determined by the commission to test negative for any substance  
12 prohibited by this administrative regulation and is approved for racing by the commission  
13 veterinarian and the chief state steward or presiding judge.

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

- 18 1. For a first offense, a Class A penalty as established in 810 KAR 8:030; or
- 19 2. For a second offense, permanent license revocation.

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



1 (5) Failure to report treatment as required by this administrative regulation shall be  
2 penalized as follows:

3 (a) For a first offense, a warning; or

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

5 (6) Upon finding a violation of this administrative regulation, the horse in which the  
6 presence of a substance described in Section 2 of this administrative regulation was detected  
7 shall be barred from racing in Kentucky and placed on the veterinarian's list pursuant to 810 KAR  
8 8:010, Section 18 [~~17~~], and the stewards' or judges' list, for a period of up to 180 days and shall  
9 remain barred from racing in Kentucky until the horse is determined by the commission to test  
10 negative for any substance described in Section 2 of this administrative regulation and is  
11 approved for racing by the commission veterinarian and the chief state steward or presiding  
12 judge.

13 (7) Upon finding a violation of this administrative regulation, the horse in which the  
14 presence of a substance described in Section 2 of this administrative regulation was detected  
15 shall remain subject to the requirements of subsection (4) of this section:

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

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

810 KAR 8:040  
READ AND APPROVED:

Jonathan Rabinowitz /qr

03/04/2021

Jonathan Rabinowitz

Date

Chair, Kentucky Horse Racing Commission

Kerry Harvey

3/4/2021

Kerry Harvey

Date

Secretary, Public Protection Cabinet

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held at 9:00 a.m. on May 24, 2021 at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, KY 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays 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 canceled. 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 PM on May 31, 2021. 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: Jennifer Wolsing

Title: General Counsel

Address: Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, KY 40511

Phone: +1 (859) 246-2040

Fax: +1 (859) 246-2039

Email: [jennifer.wolsing@ky.gov](mailto:jennifer.wolsing@ky.gov)

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 810 KAR 8:040  
Contact Person: Jennifer Wolsing  
Phone: +1 (859) 246-2040  
Email: jennifer.wolsing@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for out-of-competition testing in the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly establish requirements and prohibitions concerning the use of medications when race horses are not in competition.

(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 when race horses are not in competition.

(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 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: The proposed amendment will revise this regulation to state that clenbuterol may be administered if the treatment is compliant with 810 KAR 8:010.

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

(c) How the amendment 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 when race horses are out of competition.

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

(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 and standardbred 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 the previous question 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 each of the regulated entities have to take to comply with this 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 medications in horse racing. Trainers, owners, and veterinarians will have to alter their medication administration practices to comply with the amendments to this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No new costs are anticipated to comply with this administrative regulation, as the cost of the tests to exit the veterinarian's list are free to the owners and trainers.

(c) As a result of compliance, what benefits will accrue to the entities: 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 or funding are necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased 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 or why not. 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: 810 KAR 8:040

Contact Person: Jennifer Wolsing

Phone: +1 (859) 246-2040

Email: jennifer.wolsing@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, 230.240, 230.260.

(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. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(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 new or additional 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 new or additional 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.

(4) Revenues (+/-): Neutral.

(5) Expenditures (+/-): Neutral.

(6) Other Explanation: NA