

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

**810 KAR 8:070. Bisphosphonates.**

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

STATUTORY AUTHORITY: KRS 230.215(2), 230.225, 230.240(2), 230.260(8), 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 the horse participating in a race. This administrative regulation establishes requirements and controls in the administration of certain drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibilities relating to the health and fitness of horses.

Section 1. Horses Under Four (4) Years of Age.

(1) A horse under four (4) years of age shall not be administered a bisphosphonate.

(2) If a bisphosphonate is detected in an out-of-competition or post-race sample from a horse under four (4) years of age:

(a) The trainer, owner, or responsible person shall be in violation of this administrative regulation; and

(b) The horse shall be placed on the Veterinarian's List for a minimum of six (6) months from the date of sampling.

Section 2. Horses Four (4) Years of Age or Older.

(1) A bisphosphonate may be administered to a horse four (4) years of age or older if the bisphosphonate is:

(a) Approved by the Food and Drug Administration for use in the horse;

(b) Administered according to the label requirements; and

(c) Used for the treatment of navicular disease that has been diagnosed by a licensed veterinarian.

(2) The commission shall be notified within twenty-four (24) hours of the administration of any bisphosphonate to a horse.

(3) If a horse is administered a bisphosphonate, the horse shall be placed on the Veterinarian's List for a minimum of six (6) months after the last administration.

(4) If a bisphosphonate is detected in an out-of-competition or post-race sample from a horse four (4) years of age or older and the commission has not received a timely notification of an administration under subsection (2) of this section or the administration of the bisphosphonate does not meet the requirements of subsection (1) of this section:

(a) The trainer, owner, or responsible person shall be in violation of this administrative regulation; and

(b) The horse shall be placed on the Veterinarian's List for a minimum of six (6) months from the date of sampling.

FRANKLIN S. KLING JR., Chairman

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: February 13, 2020

FILED WITH LRC: February 14, 2020 at 9 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held at 10:00 AM on April 22, 2020 at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 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 April 30, 2020. 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, General Counsel, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 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

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the use of bisphosphonates in horses that will race at licensed racing associations in the Commonwealth. The regulation establishes a prohibition concerning the use of bisphosphonates in horses under the age of four (4), and imposes reporting requirements on the use of bisphosphonates in horses aged four (4) or older. The regulations also requires horses that have been administered bisphosphonates to be placed on the Veterinarian's List.

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

(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 bisphosphonates in horses that will race at 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 bisphosphonates are used appropriately in horses that will race in Kentucky 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 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 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 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 bisphosphonates in horse racing. In particular, those participants will be required not to use bisphosphonates in horses under age four (4) and to report the use of bisphosphonates to the commission when used in horses aged four (4) and above.

(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 Kentucky's licensees have operated in accordance with similar requirements for other medications for many years. At present, bisphosphonates are FDA approved only for use in horses aged four (4) and above. The commission already tests out-of-competition and post-race samples for various medications, drugs, and other substances.

(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 and safety 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? 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

(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. 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 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