

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

810 KAR 8:060. Post-race sampling and testing procedures.

RELATES TO: 230.215, 230.240, 230.260, 230.265(2), 230.290(2), 230.320(1)

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission (the "commission") to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and pari-mutuel wagering thereon is conducted in Kentucky~~[the Commonwealth]~~. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes requirements and controls in post-race sampling and testing to ensure that prohibited substances are not used.

Section 1. Test Barn. In addition to the procedures established in 810 KAR 8:010, Section 10, the commission shall require the following procedures:

- (1) A security guard employed by a licensed association shall regulate access to the test barn during and immediately following each race; and
- (2) All individuals who wish to enter the test barn shall be:
 - (a) Currently licensed by the commission;
 - (b) Display their commission identification badge; and
 - (c) Have the permission of the commission veterinarian or his or her designee to be in the test barn.

Section 2. Race Classifications for Sampling.

- (1) For races with purses of \$2,500 or less:
 - (a) The horse finishing first shall be sampled and a portion of the specimen shall be designated as a gold sample; and
 - (b) The chief state steward, presiding judge, or his or her designee, may select one or more other horses to be sampled and shall designate a portion of each specimen as a red sample or a gold sample in accordance with Section 4 of this administrative regulation.
- (2) For races with purses that exceed \$2,500 but are less than \$200,000~~[\$100,000]~~:
 - (a) The horse finishing first and at least one (1) other horse shall be sampled;
 - (b) The chief state steward, presiding judge, or his or her designee, shall designate a portion of each specimen as a red sample or a gold sample in accordance with Section 4 of this administrative regulation; and
 - (c) A portion of at least one (1) specimen from each race shall be designated as a gold sample.
- (3) For races with purses of \$200,000~~[\$100,000]~~ or more:
 - (a) The horses finishing first, second, and third shall be sampled;
 - (b) The chief state steward, presiding judge, or his or her designee, may select one or more other horses to be sampled and shall designate a portion of each specimen as a red sample or a gold sample in accordance with Section 4 of this administrative regulation; and
 - (c) Portions of at least three (3) specimens shall be designated as gold samples.

Section 3. Selection of Horses and Designation of Samples.

(1) In selecting horses for sampling and designating portions of specimens as gold samples or red samples, the chief state steward, presiding judge, or his or her designee, shall consider all information available, including:

- (a) The performance of a horse favored to win the race by the wagering patrons;
- (b) The performance of horses considered to be long-shots to win the race by the wagering patrons;
- (c) The betting patterns of wagering patrons;
- (d) A trainer's recent statistical performance in relation to his or her historical statistical performance; and
- (e) Security intelligence.

(2) The chief state steward, presiding judge, or his or her designee shall notify the test barn promptly upon completion of a race as to which horse or horses shall be sampled.

(3) Prior to the close of business on the date of sampling, the chief state steward, presiding judge, or his or her designee shall notify the test barn in writing regarding which samples are designated as gold samples and which samples are designated as red samples.

Section 4. Sampling.

(1) A horse designated for sampling by the stewards or judges shall proceed immediately to the test barn following each race to have a specimen collected under the direction of the commission veterinarian.

(2) If an adequate specimen cannot be obtained from a horse designated for sampling within sixty (60) minutes after arrival at the testing barn, the commission veterinarian may require an individual employed by the commission to accompany the horse from the test barn to its stall and remain with the horse until an adequate specimen is obtained.

(3) All sampling shall be performed in accordance with 810 KAR 8:010, Section 11.

(4) Split samples shall be subject to the provisions and procedures established in 810 KAR 8:010, Section 12, and the chain of custody of any split sample shall be maintained in accordance with the procedures established in 810 KAR 8:010, Section 13.

Section 5. Shipment and Testing.

(1) All gold samples and red samples shall be labeled and sent to the commission laboratory for testing in accordance with the procedures established in 810 KAR 8:010, Section 11.

(2) A technician at the commission laboratory shall create a log of each sample received and enter the color code into the Laboratory Information Management System or other information management system approved by the commission.

(3) All gold samples shall be tested.

(4) Fifty (50) percent of all red samples shall be randomly selected by the Laboratory[~~Lab~~] Information Management System, or other information management system approved by the commission, and tested.

(5) All red samples that are not selected for testing shall be frozen or refrigerated and retained pursuant to a contract between the commission and the commission laboratory.

(6) If a sample tests positive for a prohibited substance by 810 KAR Chapter 8, all specimen or specimens collected from horses who competed in the same race shall be tested.

(7) All testing and reports shall be completed in accordance with 810 KAR 8:010 and 810 KAR 8:030.

JONATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: October 29, 2020

FILED WITH LRC: October 29, 2020 at 8:55 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on January 21, 2021, at Kentucky Horse Racing Commission, 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 p.m. on January 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, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email 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 procedure by which postrace samples are selected for testing. The regulation sets forth varying procedures to be followed depending upon the type of race that is being run.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly regulate the collection of samples from horses on racing dates at race meetings in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.240(2) states that the racing commission shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation is necessary to ensure that the commission has proper oversight of the use and administration of drugs or stimulants to horses participating in a race, in accordance with that statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that samples are collected systematically and securely 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: Currently, this regulation requires the commission to sample the first, second, and third finishers in all races with purses of \$100,000.00 or more. This amendment would instead require the commission to sample first, second, and third place finishers only in races with purses of \$200,000.00 or more. This amendment would still afford the stewards with discretion to send any horses to the test barn at any time.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to bring the terms of 810 KAR 8:060 into line with the Kentucky horse rac-

ing industry's modern purse structures. The \$100,000.00 testing floor is an outdated number, which does not take into account modern purse structures. 810 KAR 8:060 was written when the average purse was considerably lower than it is now. When this regulation was initially promulgated, the \$100,000.00 floor encompassed only a few races per year that were outside of the stakes race provision. At this time, however, the Kentucky horse industry's purse structure is such that this \$100,000 floor includes maiden races, allowance races, and others that were not intended to be included.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.240(2) states that the racing commission shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This amendment will allow the commission to maintain oversight of the use and administration of drugs or stimulants to horses participating in a race, in accordance with that statute, while bringing the terms of 810 KAR 8:060 into line with the Kentucky horse racing industry's modern purse structures.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures that samples are collected systematically and securely on racing days and in a manner that is consistent with the integrity of racing, while also accounting for the Kentucky horse racing industry's modern purse structures.

(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 racing associations, 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 collection of specimen samples on racing days at horse racing meetings in the Commonwealth.

(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 the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in horse racing will benefit from the implementation of a testing system that is in line with Kentucky horse racing industry's modern purse structures.

(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 the proposed amendment to this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement the proposed amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be necessary to implement and enforce the proposed amendment to this administrative regulation, and in fact, this proposed

amendment will likely decrease current expenditures. Any minimal costs will be funded from the budget of the Commission.

(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 amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to 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 continue to 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. 230.215, 230.240, 230.260, 230.265, 230.290, 230.320.

(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 additional funds will be required to administer the amendment to this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No additional funds will be required to administer the amendment to 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