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

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

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

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

Section 1. Definitions.

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

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

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

(a) Pre-race TCO2 testing; and

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

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

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

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

Section 2. Prohibited Substances and Practices.

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

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

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

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

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

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

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

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

(5)

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

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

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

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

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

2. The administration is:

a. Performed pursuant to a valid veterinary prescription;

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

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

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

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

(6)

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

1. Clenbuterol;
2. Selective androgen receptor modulators (SARMs);
3. Ractopamine;
4. Tibolone;
5. Zeranol; and
6. Zilpaterol.

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

1. Pursuant to a valid veterinary prescription;
2. Reported by the administering veterinarian to the commission no later than 24 hours after administration or dispensing of the medication; and
3. Otherwise compliant with 810 KAR 8:010, Section 10.

(7) The following substances shall be prohibited:

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

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

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

(8)

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

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

1. The treatment is pursuant to a valid veterinary prescription; and
2. The administering veterinarian files a treatment plan with the commission prior to administering the medication.

(9)

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

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

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

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

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

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

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

(a) Pursuant to a valid veterinary prescription; and

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

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

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

(a) Pursuant to a valid veterinary prescription;

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

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

(13)

(a) Except as established in paragraphs (b) and (c) of this subsection, hormone and metabolic modulators shall be prohibited such as:

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

2. Selective estrogen receptor modulators (SERMs), such as raloxifene, tamoxifen, toremifene;

3. Other anti-estrogenic substances, such as clomiphene, cyclofenil, fulvestrant;

4. Agents modifying myostatin function(s), such as myostatin inhibitors;

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

6. Insulins;

7. Trimetazidine; and

8. Thyroxine, and thyroid modulators/hormones such as T4 (tetraiodothyronine/thyroxine), T3 (triiodothyronine), or combinations thereof.

(b) Thyroxine (T4) may be used:

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

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

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

1. Pursuant to a valid veterinary prescription; and

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

(14)

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

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

1. Pursuant to a valid veterinary prescription; and

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

(c) Other diuretics, including those established in paragraph (a) of this subsection, may be administered in an emergency if the treatment is:

1. Pursuant to a valid veterinary prescription; and
2. Reported to the commission within twenty-four (24) hours of administration.

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

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

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

(18)

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

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

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

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

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

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

(b) Pursuant to a valid veterinary prescription; and

(c) Reported to the commission's representative at the time of sampling.

Section 3. Out-of-Competition Testing.

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

(a) It is under the care, custody, or control of a trainer licensed by the commission;

(b) It is owned by an owner licensed by the commission;

(c) It is nominated to a race at an association licensed pursuant to KRS 230.300;

(d) It has raced at an association licensed pursuant to KRS 230.300 within the previous twelve (12) calendar months;

(e) It is stabled on the grounds of an association licensed pursuant to KRS 230.300 or a training facility subject to the jurisdiction of the commission; or

(f) It is nominated to participate in the Kentucky Thoroughbred Development Fund, the Kentucky Standardbred Development Fund, or the Kentucky quarter horse, paint horse, Appaloosa and Arabian Development Fund.

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

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

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

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

(c) Observing the collection of the specimen.

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

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

(4) Responsible persons.

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

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

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

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

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

Section 4. Specimen Collection.

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

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

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

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

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

Section 5. Minimum and split samples. The commission veterinarian, in consultation with the official laboratory, shall determine minimum and split sample requirements as established at 810 KAR 8:010, Section 12.

Section 6. Sample Storage and Testing.

(1) Any out of competition sample collected pursuant to this administrative regulation shall be stored in a temperature controlled unit at a secure location chosen by the commission until the sample is submitted for testing. The samples shall be secured under conditions established by the commission veterinarian in accordance with 810 KAR 8:010, Section 13.

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

(3) A trainer or owner of a horse receiving notice of a report of finding from the commission may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to a split sample laboratory which has documented its proficiency in detecting the substance associated with the report of finding and has been approved by the commission.

(4) Split samples shall be subject to 810 KAR 8:010, Sections 12 and 13, and the chain of custody of any split sample shall be maintained in accordance with 810 KAR 8:010, Section 14.

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

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

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

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

(2) If the owner, trainer, or any authorized designee fails to cooperate or otherwise prevents a horse from being tested, the horse designated for testing shall be barred from racing in Kentucky and placed on the veterinarian's list, pursuant to 810 KAR 8:010, Section 19, and the steward's list or judges' list, for 180 days, and the individual or individuals responsible for the failure to cooperate or prevention of the horse from being tested shall be subject to the penalties established in subsection (4) of this section.

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

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

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

(4)

(a) Willful failure to make a horse available for sampling, tampering with or attempting to tamper in order to alter the integrity and validity of a sample, including

urine substitution or adulteration, or any other deceptive acts or interference in the sampling process, shall be penalized as follows:

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

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

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

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

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

(6) Upon finding a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected shall be barred from racing in Kentucky and placed on the veterinarian's list pursuant to 810 KAR 8:010, Section 19, and the stewards' or judges' list, for a period of up to 180 days and shall remain barred from racing in Kentucky until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward or presiding judge.

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

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

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

(45 Ky.R. 2009, 3176; eff. 5-31-2019; 47 Ky.R. 2174; 48 Ky.R. 44; eff. 10-5-2021.)