

**BEFORE THE PENNSYLVANIA
STATE HORSE RACING COMMISSION**

IN RE: :
OUT-OF-COMPETITION TESTING PROGRAM : **Administrative Docket 2017-5**
:

ORDER

AND NOW, this 28th day of February, 2017, upon consideration of the procedures set forth in the proposed "Out-of-Competition Testing Program" and upon consideration of the purpose of the Out-of-Competition Testing Program to ensure the integrity of the sport and protect the welfare of the horse, and further, upon consideration of the adoption of the virtually identical Out-of-Competition Testing Programs in surrounding jurisdictions, the Commission hereby approves and adopts the Out-of-Competition Testing Program as set forth in "Attachment A" to this Order. The Commission further directs its staff to publish notice of these procedures in the *Pennsylvania Bulletin* as soon as possible.

**BY THE PENNSYLVANIA
STATE HORSE RACING COMMISSION:**



Russell C. Redding, Chairman

Out of Competition Testing Program

Section 1. Purpose.

The Pennsylvania Horse Racing Commission is dedicated to ensuring the integrity of the sport and protecting the welfare of the horse. The purpose of Out of Competition Testing (OCT) is twofold;

- i. To test the horse for performance enhancing substances that may not otherwise be detected with post-race testing.
- ii. To deter the use of these substances.

Section 2. Out-of-competition testing authorization. The commission may at a reasonable time on any date take blood, urine or other biologic samples as authorized by commission rules from a horse to enhance the ability of the commission to enforce its medication and anti-doping rules. The commission shall own such samples. This rule authorizes only the collection and testing of samples and does not independently make impermissible the administration to or presence in any horse of any drug or other substance. A race day prohibition or restriction of a substance by a commission rule is not applicable to an out-of-competition test unless there is an attempt to race the horse in a manner that violates such rule.

Section 3. Horses eligible to be tested. Any horse that has been engaging in activities related to competing in horse racing in Pennsylvania may be tested. This includes without limitation any horses that are training outside of Pennsylvania to participate in racing in Pennsylvania and all horses that are training in Pennsylvania.

- a) A horse is presumed eligible for out-of-competition testing if:
 - (i) It is on the grounds at a racetrack or horse facility within the Commonwealth. If the trainer of record or a designee of the selected horse is not available the trainer will have 24 hours' notice to have the specified horse(s) at the designated racetrack for samples to be pulled.
 - (ii) It is under the care or control of a trainer licensed by the commission;
 - (iii) It is owned by an owner licensed by the commission;
 - (iv) It is entered or nominated to race at a premises licensed by the commission;
 - (v) It has raced within the previous 12 months at a premises licensed by the commission; or
 - (vi) It is nominated to a program based on racing in the jurisdiction, including without limitation a state thoroughbred development, breeder's award fund, or Standardbred state sires stakes.

Section 4. Selection of horses to be test.

- a) Reasonable or probable cause:
- b) Intelligence-led regulation generates significant quantities of useful information that may give the Commission reasonable cause to conduct OCT.

- c) If a seizure of illegal medication is made there may be reasonable cause to test the horses of the stable in question.
- d) Conditions of a License: Some participants may be subject to out of competition testing because of prior positive test results, wherein a condition to allow has been placed on their license.
- e) Changes in Performance.
- f) Stakes Races: Any horse entered into stakes races in Pennsylvania may be randomly selected for OCT.
- g) Horses shall be selected for sampling by the Bureau Director, or a designee of the Bureau Director
- h) Horses may be selected to be tested at random, for cause, or as otherwise determined at the discretion of the commission.

Section 5. General procedure for collecting samples.

- a) Samples shall be taken under the supervision and direction of a person who is employed or designated by the commission. All blood samples shall be collected by a veterinarian licensed in the state where the sample is collected, or by a veterinary technician who is acting under appropriate supervision of the veterinarian.
- b) Upon request of a representative of the commission, the trainer, owner, or their specified designee shall provide the location of their horses eligible for out-of-competition testing.
- c) The commission need not provide advance notice before arriving at any location, whether or not licensed by the commission, to collect samples.
- d) The trainer, owner, or their specified designee shall cooperate with the person who takes samples for the commission, and said cooperation shall include without limitation:
 - i. Assist in the immediate location and identification of the horse;
 - ii. Make the horse available as soon as practical upon arrival of the person who is responsible for collecting the samples;
 - iii. Provide a stall or other safe location to collect the samples;
 - iv. Assist the person who is collecting samples in properly procuring the samples; and
 - v. Witness the taking of samples including sealing of sample collection containers.
- e) The management and employees of a licensed racetrack or horse facility at which a horse may be located shall cooperate fully with a person who is authorized to take samples. The person who collects samples for the commission may require that the collection be done at a specified location on such premises.
- f) The commission, if requested and in its sole discretion, may permit the trainer, owner, or their

specified designee to present a horse that is located in Pennsylvania, but not at a racetrack or horse facility licensed by the commission, to be sampled at a time and location designated by the commission.

Section 6. Procedure for collecting samples from horses located outside the jurisdiction.

- a) The commission may arrange for the sampling of an out-of-state horse by requesting the selected horse appear at a designated race track under commonwealth jurisdiction with 24 hours' notice. Failure to abide by this request will result in a scratch and the horse will be placed on the Stewards/Judges list for 90 days. Plus, the trainer of record will be subjected to a penalty under 10(a).

Section 7. Additional procedures.

- a) The person who takes samples for the commission shall provide Commission identification and disclose the purpose of the sampling to the trainer or designated attendant of the horse.
- b) An owner or trainer does not consent to a search of the premises by making a horse that is not located at a racetrack or horse facility available for sampling.
- c) If the trainer or other custodian of a selected horse refuses or declines to make the horse available for sampling and the managing owner has previously provided the commission with a means for the commission to give immediate notification to the managing owner in such situation, then the commission shall attempt to notify the managing owner and the eligibility of the horse shall be preserved if the managing owner is able to make the horse available for immediate sampling. The commission is not required to make repeated attempts to notify the managing owner.

Section 8. Analysis of collected samples.

- a) The commission may have out-of-competition samples tested to produce information that may enhance the ability of the commission to enforce its medication and anti-doping rules.
- b) Split sample rules and procedures for post-race testing shall apply to out-of-competition testing, with the exception of the split sample being retained at the laboratory instead of the race track.
- c) The commission may use any remaining sample for research and investigation.

Section 9. Cooperation with the commission.

- a) Licensees of the commission are required to cooperate and comply fully with the provisions of this rule.
- b) Persons who apply for and are granted a trainer or owner license shall be deemed to have given their consent for access at such premises as their horse may be found for the purpose of commission representatives collecting OTC samples. Licensees shall take any steps necessary to authorize access by commission representatives at such premises.
- c) No other person shall knowingly interfere with or obstruct a sampling.

Section 10. Penalties for non-cooperation or positive tests.

- a) Willful failure to make a horse available for sampling or other willfully deceptive acts or interference in the sampling process shall carry a minimum penalty of a 180 days suspension plus a \$5,000 fine and referral to the commission. Also, all horses entered in to race may be scratched.
- b) A selected horse that is not made available for out-of-competition sampling shall be placed on the Steward's or Judges List. The horse shall remain on the list for a minimum of 90 days and must test negative per OTC requirements prior to be removed from the list.
- c) A selected horse that is presumed eligible for OTC testing shall be placed on the Steward's/Judge's list and be ineligible to race in Pennsylvania for 180 days if the horse is not sampled because the trainer, owner, or their designee asserts that the horse is not engaged in activities related to competing in horse racing in Pennsylvania. This restriction shall not apply if the trainer, owner or their designee instead permits voluntarily an immediate collection of such samples from the horse.
- d) Penalty for trainer with a Positive test for Anabolic Steroids shall be \$5,000 plus a suspension of 180 days. This is in addition to any purse money earned that will be forfeited.
- e) Penalty for trainer with a Positive test for blood doping agents shall be \$10,000 plus a suspension of 2 years. This is in addition to any purse money earned that will be forfeited
- f) Horses that test positive for Anabolic Steroids or Blood doping agents shall be placed on the Steward's or Judges List for a minimum of 90 days. In order to be released from the Steward's or Judges list the horse must provide a negative sample.

NOTICE

**PENNSYLVANIA DEPARTMENT OF AGRICULTURE
STATE HORSE RACING COMMISSION**

Out of Competition Testing Program

The State Horse Racing Commission ("Commission") hereby provides notice that on February 28, 2017 (Administrative Docket No. 2017-5), in accordance with the statutory authority set forth in 3 Pa. C.S. §9312 (6) (relating to the adoption of national standards), it issued an Order approving and adopting the Out of Competition Testing Program ("Program") as adopted and amended by the Association of Racing Commissioners International, a nationally recognized association of racing regulators.

The complete text of the February 28, 2017 Order, including the procedures of the Program adopted by that Order, is set forth below. Within the next several weeks the Commission shall republish the Program as temporary regulations. Until that occurs, the Program set forth below offers guidance to officials and participants within the racing industry. The complete text of the referenced documents is as follows:

ORDER

AND NOW, this 28th day of February, 2017, upon consideration of the procedures set forth in the proposed "Out-of-Competition Testing Program" and upon consideration of the purpose of the Out-of-Competition Testing Program to ensure the integrity of the sport and protect the welfare of the horse, and further, upon consideration of the adoption of the virtually identical Out-of-Competition Testing Programs in surrounding jurisdictions, the Commission hereby approves and adopts the Out-of-Competition Testing Program as set forth in "Attachment A" to this Order. The Commission further directs its staff to publish notice of these procedures in the *Pennsylvania Bulletin* as soon as possible.

RUSSELL C. REDDING,
Chairman
State Horse Racing Commission

ATTACHMENT A

OUT OF COMPETITION TESTING PROGRAM

Section 1. Purpose.

The Pennsylvania Horse Racing Commission is dedicated to ensuring the integrity of the sport and protecting the welfare of the horse. The purpose of Out of Competition

Testing (OCT) is twofold;

- i. To test the horse for performance enhancing substances that may not otherwise be detected with post-race testing.
- ii. To deter the use of these substances.

Section 2. Out-of-competition testing authorization. The commission may at a reasonable time on any date take blood, urine or other biologic samples as authorized by commission rules from a horse to enhance the ability of the commission to enforce its medication and anti-doping rules. The commission shall own such samples. This rule authorizes only the collection and testing of samples and does not independently make impermissible the administration to or presence in any horse of any drug or other substance. A race day prohibition or restriction of a substance by a commission rule is not applicable to an out-of-competition test unless there is an attempt to race the horse in a manner that violates such rule.

Section 3. Horses eligible to be tested. Any horse that has been engaging in activities related to competing in horse racing in Pennsylvania may be tested. This includes without limitation any horses that are training outside of Pennsylvania to participate in racing in Pennsylvania and all horses that are training in Pennsylvania.

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 - (i) It is on the grounds at a racetrack or horse facility within the Commonwealth. If the trainer of record or a designee of the selected horse is not available the trainer will have 24 hours' notice to have the specified horse(s) at the designated racetrack for samples to be pulled.
 - (ii) It is under the care or control of a trainer licensed by the commission;
 - (iii) It is owned by an owner licensed by the commission;
 - (iv) It is entered or nominated to race at a premises licensed by the commission;
 - (v) It has raced within the previous 12 months at a premises licensed by the commission; or
 - (vi) It is nominated to a program based on racing in the jurisdiction, including without limitation a state thoroughbred development, breeder's award fund, or Standardbred state sires stakes.

Section 4. Selection of horses to be test.

- a) Reasonable or probable cause:
- b) Intelligence-led regulation generates significant quantities of useful information that may give the Commission reasonable cause to conduct OCT.

- c) If a seizure of illegal medication is made there may be reasonable cause to test the horses of the stable in question.
- d) Conditions of a License: Some participants may be subject to out of competition testing because of prior positive test results, wherein a condition to allow has been placed on their license.
- e) Changes in Performance.
- f) Stakes Races: Any horse entered into stakes races in Pennsylvania may be randomly selected for OCT.
- g) Horses shall be selected for sampling by the Bureau Director, or a designee of the Bureau Director
- h) Horses may be selected to be tested at random, for cause, or as otherwise determined at the discretion of the commission.

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- a) Samples shall be taken under the supervision and direction of a person who is employed or designated by the commission. All blood samples shall be collected by a veterinarian licensed in the state where the sample is collected, or by a veterinary technician who is acting under appropriate supervision of the veterinarian.
- b) Upon request of a representative of the commission, the trainer, owner, or their specified designee shall provide the location of their horses eligible for out-of-competition testing.
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- d) The trainer, owner, or their specified designee shall cooperate with the person who takes samples for the commission, and said cooperation shall include without limitation:
 - i. Assist in the immediate location and identification of the horse;
 - ii. Make the horse available as soon as practical upon arrival of the person who is responsible for collecting the samples;
 - iii. Provide a stall or other safe location to collect the samples;
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 - v. Witness the taking of samples including sealing of sample collection containers.

- e) The management and employees of a licensed racetrack or horse facility at which a horse may be located shall cooperate fully with a person who is authorized to take samples. The person who collects samples for the commission may require that the collection be done at a specified location on such premises.
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Section 7. Additional procedures.

- a) The person who takes samples for the commission shall provide Commission identification and disclose the purpose of the sampling to the trainer or designated attendant of the horse.
- b) An owner or trainer does not consent to a search of the premises by making a horse that is not located at a racetrack or horse facility available for sampling.
- c) If the trainer or other custodian of a selected horse refuses or declines to make the horse available for sampling and the managing owner has previously provided the commission with a means for the commission to give immediate notification to the managing owner in such situation, then the commission shall attempt to notify the managing owner and the eligibility of the horse shall be preserved if the managing owner is able to make the horse available for immediate sampling. The commission is not required to make repeated attempts to notify the managing owner.

Section 8. Analysis of collected samples.

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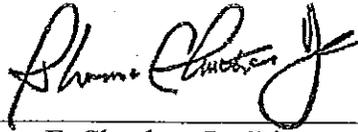
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Section 9. Cooperation with the commission.

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Thomas F. Chuckas, Jr., Director
Bureau of Thoroughbred Horse Racing



Brett Revington, Director
Bureau of Standardbred Horse Racing



NOTICES

STATE HORSE RACING COMMISSION

Out of Competition Testing Program

[47 Pa.B. 2525]

[Saturday, April 29, 2017]

The State Horse Racing Commission (Commission) hereby provides notice that on February 28, 2017 (Administrative Docket No. 2017-5), in accordance with the statutory authority set forth in 3 Pa.C.S. § 9312(6) (relating to additional powers of commission), it issued an Order approving and adopting the Out of Competition Testing Program (Program) as adopted and amended by the Association of Racing Commissioners International, a Nationally-recognized association of racing regulators.

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RUSSELL C. REDDING,
Chairperson
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Attachment A

Out of Competition Testing Program

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THOMAS F. CHUCKAS, Jr.,
Director
Bureau of Thoroughbred Horse Racing

BRETT REVINGTON,
Director
Bureau of Standardbred Horse Racing

[Pa.B. Doc. No. 17-747. Filed for public inspection April 28, 2017, 9:00 a.m.]

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