

**CHAPTER 405. OUT-OF-COMPETITION TESTING PROGRAM—  
TEMPORARY REGULATIONS**

- Sec.  
405.1.      General purpose.  
405.2.      Out-of-competition testing authorization.  
405.3.      Horses eligible to be tested.  
405.4.      Selection of horses to be tested.  
405.5.      General procedures for collecting samples.  
405.6.      Procedures for collecting samples from horses located outside the jurisdiction.  
405.7.      Analysis and use of collected samples.  
405.8.      Cooperation with the Commission.  
405.9.      Penalties for non-cooperation or positive tests.

**§ 405.1. General purpose.**

The purpose of this chapter is to ensure the health, safety and welfare of racehorses and to properly safeguard the integrity of racing, the interests of the general public and the participants in racing by testing racehorses for performance enhancing substances that may not otherwise be detected with post-race testing and to deter the illegal use of these substances.

**§ 405.2. Out-of-competition testing authorization.**

(a) Under the statutory authority set forth in act, the Commission may, at any reasonable time, on any reasonable date draw 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. All these samples shall be the property of the Commission.

(b) 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.

(c) 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 this rule.

**§ 405.3. Horses eligible to be tested.**

(a) Any horse that has engaged in racing activities, including training and competing in horse racing in this Commonwealth is eligible to be selected for random testing, as set forth below. This shall include, without limitation, any horse which is located, stabled or trained outside of this Commonwealth in preparation to participate in racing within this Commonwealth.

(b) A horse is presumed eligible for out-of-competition testing if:

(1) It is on the grounds of a racetrack or horse facility within this Commonwealth. If the trainer of record or a designee of the selected horse is not

available, the trainer will be given 24 hours to produce the specified horses at the designated racetrack or location for samples to be taken.

- (2) It is under the care or control of a trainer licensed by the Commission;
  - (3) It is owned by an individual owner or ownership group or partnership duly licensed by the Commission;
  - (4) It is entered or nominated to race at a racetrack or other facility licensed by the Commission;
  - (5) It has raced within the previous 12 months at a racetrack or other facility licensed by the Commission; or
  - (6) It is nominated to a program based on racing in this jurisdiction, including a Thoroughbred breeder's award race, or Standardbred sire stakes race.
- (c) The presumption of eligibility to be tested, as previously set forth, is conclusive in the absence of evidence that the horse is not engaged in racing activities relating to competing in horse racing within this Commonwealth.

#### Cross References

This section cited in 7 Pa. Code § 405.9 (relating to penalties for non-cooperation or positive tests).

#### § 405.4. Selection of horses to be tested.

Horses shall be selected for random sampling by the breed specific Bureau Director, or a designee of the Bureau Director. Selection of horses to be sampled and tested may be based upon any of the following:

- (1) Reasonable suspicion or probable cause based upon gathered intelligence or investigation;
- (2) The seizure of illegal medication, drugs or paraphernalia in the custody, control or possession of the horse's owner, trainer or groom;
- (3) An enumerated "condition" of licensure;
- (4) Past medication or drug violations;
- (5) Documented changes in the horses performances; or
- (6) Horses entered in Stakes Races in Pennsylvania.

#### § 405.5. General procedures for collecting samples.

(a) Upon request, the Commission Veterinarian, Commission investigators and any other person designated to take samples for the Commission shall provide proper identification and disclose the purpose of the sampling to the owner, trainer or designated attendant of the horse.

(b) All samples shall be collected by and under the supervision and direction of a Commission Veterinarian or other persons duly employed or designated by the Commission. Samples taken outside of this Commonwealth may be taken by a regulatory veterinarian employed by the racing jurisdiction of the state where the sample is collected, or by a veterinary technician who is acting under appropriate supervision of the regulatory veterinarian.

(c) The Commission need not provide advanced notice before arriving at any racing facility or other location, whether or not licensed by the Commission, to collect samples.

(d) Upon request by a representative of the Commission, the trainer, owner or their specified designee shall immediately provide information regarding the exact location of their horses which are eligible for out-of-competition testing.

(e) If a representative of the Commission has previously sought and received permission from a managing owner of a facility at which a selected horse is located, no trainer or other custodian of a selected horse may refuse or decline the sampling of the selected horse. The Commission may attempt but is not required to contact the managing owner of the facility again to secure the immediate sampling of the selected horse.

(f) The trainer, owner, or their specified designee shall cooperate fully with the Commission's representative collecting the out-of-competition samples for the Commission. Full cooperation by the trainer, owner, or specified designee shall include:

- (1) Assisting in the immediate location and identification of the horses;
- (2) Making the horse available as soon as practical upon arrival of the person who is responsible for collecting the samples;
- (3) Providing a stall or other safe location to collect the samples;
- (4) Assisting the person who is collecting samples in properly procuring the samples; and
- (5) Witnessing the taking of samples including sealing of sample collection containers.

(g) The management and employees of a licensed racetrack or horse facility at which a horse may be located shall cooperate fully with the Commission representative 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 the premises.

(h) The Commission, in its sole discretion, and upon request, may permit the trainer, owner, or their specified designee to present a selected horse, which is located in this Commonwealth, but not at a licensed racetrack or horse facility licensed by the Commission, to be sampled at an alternate time and location designated by the Commission.

#### Cross References

This section cited in 7 Pa. Code § 405.8 (relating to cooperation with the Commission).

### **§ 405.6. Procedures for collecting samples from horses located outside the jurisdiction.**

The Commission may arrange for the sampling of an out-of-state horse by requesting that the selected horse be brought to a designated racetrack or other location in this Commonwealth within 24 hours of the request. Failure to abide

by this request will result in a scratch of the selected horse and the horse being placed on the Stewards' or Judges' list for 90 days and may further subject the owner, trainer or other specified designee of record to a penalty under § 405.9(a) (relating to penalties for non-cooperation or positive tests).

**§ 405.7. Analysis and use of collected samples.**

(a) The Commission may have out-of-competition samples tested to produce information which may enhance or assist the ability of the Commission to enforce its existing racing medication and anti-doping regulations.

(b) Existing post-race split sample rules and procedures shall apply to out-of-competition testing, except that the split sample shall be retained at the licensed racetrack.

(c) The Commission may use any remaining sample for other equine research and investigation.

**§ 405.8. Cooperation with the Commission.**

(a) Licensees of the Commission are required to cooperate and comply fully with the provisions of this chapter as set forth more specifically in § 405.5(f) (relating to general procedures for collecting samples).

(b) Any duly licensed person, including an owner, trainer or groom shall be deemed to have given specific permission and consent for Commission representatives to collect out-of-competition samples from their horses regardless of the horse's physical location, whether stabled on the grounds or shipped into a licensed racetrack. Licensees shall take any steps necessary to authorize access by Commission representatives into the premises.

(c) No other person shall knowingly and intentionally interfere with or obstruct a sampling of horses.

**§ 405.9. Penalties for non-cooperation or positive tests.**

(a) Failure or refusal to make a horse available for sampling or other intentionally deceptive acts or interference during the sampling process shall carry a minimum penalty of a 180-day suspension, plus a \$5,000 fine and referral to the Commission for other action deemed appropriate. In addition to the foregoing, a horse entered in to race, but not sampled due to the licensee's non-cooperation, may also be scratched.

(b) A selected horse, which is not made available for out-of-competition sampling, shall be placed on the Steward's or Judge's list and shall remain on the list for a minimum of 90 days and must test negative per the out-of-competition testing requirements before it may be removed from the list.

(c) A selected horse, which is presumed eligible for out-of-competition testing, as set forth in § 405.3(c) (relating to horses eligible to be tested), shall be placed on the Steward's or Judge's list and shall be ineligible to race in this Commonwealth for 180 days if the owner, trainer or their designee fails to pro-

vide evidence that the horse is not engaged in racing activities related to competing in racing within this Commonwealth. This restriction shall not apply if the trainer, owner or their designee permits the immediate collection of the samples from the horse.

(d) A trainer with a positive test for Anabolic Steroids shall be fined \$5,000 and suspended for a period of 180 days. In addition, trainer shall also forfeit any purse money earned.

(e) A trainer with a positive test for blood doping agents shall be \$10,000 and suspended for a period of 2 years. In addition, trainer shall also forfeit any purse money earned.

(f) All 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. A horse must provide a negative test sample to be removed from the Steward's or Judge's list.

**Cross References**

This section cited in 7 Pa. Code § 405.6 (relating to procedures for collecting samples from horses located outside the jurisdiction).

[Next page is 407-1.]

405-6

(398466) No. 542 Jan. 20

*Copyright © 2020 Commonwealth of Pennsylvania*