

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 50. HUMAN SUBSTANCE ABUSE TESTING**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 50. Human Substance Abuse Testing [AMENDED]

SUMMARY:

The proposed amendments clarify the procedures for substance abuse testing, payment of related costs, impose a license suspension for refusal to submit to testing, and make other minor grammatical changes for the purpose of clarity.

AUTHORITY:

3A O.S. § 200 et seq.

COMMENT PERIOD:

Persons may submit written comments to Bennett Abbott at bennett.abbott@ag.ok.gov, 2800 North Lincoln Boulevard, P.O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period beginning December 1, 2016 and ending January 5, 2017.

PUBLIC HEARING:

A public hearing will be held at 3:00 p.m., January 5, 2017 in the ODAFF Board Room, located at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Bennett Abbott at the address listed above during the period beginning December 1, 2016 and ending January 5, 2017.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by visiting www.ag.ok.gov/proposedrules or by contacting Bennett Abbott at the address listed above.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the address listed above.

CONTACT PERSON:

Bennett Abbott, (405) 522-5803, e-mail address: at bennett.abbott@ag.ok.gov.

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 50. HUMAN SUBSTANCE ABUSE TESTING**

**325:50-1-3.1. Prohibited Licensee Activities/Substance Abuse Testing
Procedures/Assessment/Treatment/ Penalties**

- (a) All licensees shall be deemed to be exercising the privileges of their license, and to be subject to the requirements of these rules, when engaged in activities that could affect the outcome of a race or diminish the conditions of safety or decorum required in restricted areas.
- (b) It shall be a violation to exercise the privileges granted by a license from this Commission if the licensee:
- (1) Is engaged in the illegal sale or distribution of alcohol or a controlled substance;
 - (2) Possesses, without a valid prescription, a controlled substance;
 - (3) Is intoxicated or under the influence of alcohol or a controlled substance;
 - (4) Is addicted, having been determined to be so by a professional evaluation, to alcohol or other drugs and not engaged in an abstinence-based program of recovery acceptable to the Commission;
 - (5) Has in his/her possession within the enclosure any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled dangerous substance;
 - (6) Refuses to submit to ~~urine or drug~~ and/or alcohol testing, when notified that such testing is based on ~~probable-cause~~ reasonable grounds that the person is using drugs or alcohol or is based on the licensee's acting as if in an impaired condition; or
 - (7) Presently has drugs (controlled substances) or alcohol in his or her body. With regard to alcohol, the results of a breathalyzer test showing a reading of more than .05 percent of alcohol in the blood shall be the criterion for a finding of alcohol present in the body. With regard to other controlled substances, presence of the drug in any quantity measured by the testing instrument establishes the presence of the drug for purposes of this paragraph.
- (c) The fact that a person charged with a violation of this rule is or has been lawfully entitled to use a prescribed substance shall not constitute a defense against any charge of violating this rule.
- (d) At its discretion, the Commission may conduct ~~probable-cause~~ drug and/or alcohol testing in order to ensure safety on the racetrack.
- (e) When conducted, ~~probable-cause~~ drug and/or alcohol testing shall apply, equally, to all licensees who may affect the outcome of a race and are exercising the privileges of their license.
- (f) No notice need be given as to onset or cessation of ~~probable-cause~~ drug and/or alcohol testing.
- (g) For licensees who are tested under the provisions in this chapter, and whose testing shows the presence of drugs (controlled substances) or alcohol, any field screening test results shall be confirmed by a laboratory acceptable to the Commission which shall include Gas Chromatography/Mass Spectrometry (GC/MS) procedures.
- (h) When the sample quantity permits, each test sample shall be divided into portions so that one portion may be used for the confirmation procedure and another portion may be utilized for

the licensee to obtain an independent analysis of the urine sample through the Commission designated laboratory.

(i) The Commission shall provide for a secure chain of custody for the sample to be made available for drug and/or alcohol testing for the licensee.

(j) All costs for the transportation and testing for the sample portion for the licensee shall be the financial responsibility ~~of the requesting person~~ as follows:

(1) If the licensee is required by order/ruling by a Board of Stewards or OHRC to obtain testing prior to being eligible for license, all cost associated with drug and/or alcohol testing shall be paid by applicant.

(2) If the licensee is ordered to obtain a drug and/or alcohol test by an OHRC Representative, all cost associated with testing shall be paid by OHRC.

(k) ~~Payment shall be due from the requesting person within 30 days of receipt of notice of the costs~~ made prior to drug and/or alcohol testing.

(l) Refusal to submit to a required drug and/or alcohol test will result in an immediate sixty (60) day suspension and require two (2) negative test results thirty (30) days apart prior to reinstatement. However, A licensee penalized or restricted pursuant to this chapter shall retain rights of due process with respect to any determination of alleged violations which may adversely affect the ~~right~~ capacity to hold a license.

(m) If there has been a violation, under (b) above, the following additional procedures will be followed:

(1) The Stewards/Commission may, at its discretion, order the licensee to obtain a professional assessment to determine whether there is a substantial probability that the licensee is dependent on, or abuses, alcohol or other drugs or the Stewards/Commission may act on the information at hand.

(2) Actions in the case of a first violation may include revocation of the license, suspension of the license for up to six months, placing the violator on probation for up to 90 days and/or ordering formal assessment and treatment.

(3) Actions in the case of a second violation may include revocation of the license, suspension of the license up to one year and/or a professional assessment of the person may be ordered by the Stewards/Commission.

(4) Treatment or assessment, if ordered, must meet the conditions established in this rule.

(5) If a professional assessment indicates presence of a problem of alcohol or other drug abuse that is not treatable within the reasonably foreseeable future (360 days) the license may be suspended for a period of up to one year.

(6) If a professional assessment indicates presence of a treatable problem of alcohol or other drug abuse or dependence, the Stewards/Commission may order the licensee to undergo treatment as a condition of continuing licensure. Such treatment will be through a program or by a practitioner, acceptable to the licensee and the Stewards/Commission. Required features of any program or practitioner acceptable to the Stewards/Commission will be:

(A) Accreditation or licensure by an appropriate government agency, if required by state statute;

(B) A minimum of one year follow-up of formal treatment; and

(C) A formal contract indicating the elements of the treatment and follow up program that will be completed by the licensee and, upon completion, certified by the program administrator to the Stewards/Commission as completed. To effect the

contract, the licensee will authorize release of information by the treating agency, hospital or individual.

(7) When a licensee is determined to have failed in maintaining abstinence, the licensee shall furnish to the Stewards/Commission an assessment by the treating agency, hospital or individual practitioner indicating whether the licensee was compliant with the agreed upon program of recovery.

(8) Persons being reinstated following a violation of these rules who have not successfully completed a rehabilitation program shall submit a negative drug and/or alcohol test prior to being licensed.

(9) Actions in the case of a third violation may include revocation of the license and the violator being deemed ineligible for licensure for up to five years.

(10) Prior human substance abuse violation reflected on a person(s) racing records from any racing jurisdiction(s) recognized by the Commission, including Oklahoma, shall be counted as violations when determining appropriate penalties as set forth in this rule.

RULE IMPACT STATEMENT

TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 50. HUMAN SUBSTANCE ABUSE TESTING

- (A) **PURPOSE OF THE PROPOSED RULE:**
The proposed amendments clarify the procedures for substance abuse testing, payment of related costs, impose a license suspension for refusal to submit to testing, and make other minor grammatical changes for the purpose of clarity.
- (B) **CLASSES OF PERSONS WHO MOST LIKELY WILL BE AFFECTED BY THE PROPOSED RULE AND ANY INFORMATION ON COST IMPACTS RECEIVED BY THE AGENCY FROM ANY PRIVATE OR PUBLIC ENTITIES:**
The proposed rules affect persons regulated by the Oklahoma Horse Racing Commission. No cost impacts have been received to date.
- (C) **PERSONS WHO WILL BENEFIT FROM THE PROPOSED RULE:**
Persons who engage in the business of horse racing or place wagers on horse races in Oklahoma will benefit from the proposed rules.
- (D) **DESCRIPTION OF THE PROBABLE IMPACT OF THE PROPOSED RULE UPON AFFECTED CLASSES OF PERSONS:**
Persons who engage in the business of horse racing will have clear rules relating to human drug testing and confidence in a safe and drug free work place.
- (E) **PROBABLE COST AND BENEFITS TO AGENCY; SOURCE OF REVENUE FOR IMPLEMENTATION AND ENFORCEMENT OF THE PROPOSED RULE:**
No additional cost to the Commission is anticipated by the proposed rules.
- (F) **DETERMINATION OF WHETHER IMPLEMENTATION WILL HAVE ANY ECONOMIC IMPACT ON ANY POLITICAL SUBDIVISION OR REQUIRE THEIR COOPERATION IN IMPLEMENTING OR ENFORCING THE PROPOSED RULE:**
No effect on any political subdivision is anticipated by the proposed rules.
- (G) **DETERMINATION OF WHETHER IMPLEMENTATION OF THE PROPOSED RULE WILL HAVE AN ADVERSE EFFECT ON SMALL BUSINESS AS PROVIDED BY THE OKLAHOMA SMALL BUSINESS REGULATORY FLEXIBILITY ACT:**
The proposed rules will have no adverse effect on small business.
- (H) **DETERMINATION OF WHETHER THERE ARE LESS COSTLY METHODS OR NON-REGULATORY METHODS FOR ACHIEVING THE PURPOSE OF THE PROPOSED RULES:**
The Commission is unaware of any non-regulatory methods to achieve the purpose of the proposed rules.

(I) **DETERMINATION OF THE EFFECT OF THE PROPOSED RULE ON THE PUBLIC HEALTH, SAFETY, AND ENVIRONMENT:**

The proposed rules will not detrimentally affect the public health, safety, and environment.

(J) **DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY, AND ENVIRONMENT:**

The Commission is not aware of any detrimental effect the proposed rules will have on public health, safety, and environment.

(K) **DATE RULE IMPACT STATEMENT WAS PREPARED:**

This rule impact statement was prepared on October 31, 2016.