

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**

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## **II. Discussion of Comments and the Commission's Findings**

Under the Act, the Commission must approve a proposed rule if it finds that the proposed rule is consistent with the Act and the Commission's procedural rule, 16 C.F.R. §§ 1.140–1.144. As a threshold matter, the Commission finds that the Authority's proposed Enforcement rule is consistent with the procedural rule. As with the Commission's earlier orders approving the Authority's Racetrack Safety and Enforcement proposed rules,<sup>2</sup> this finding formally confirms the previous determination made by the Office of the Secretary of the Commission that the Authority's submission of its proposal was consistent with the FTC's procedural rule.<sup>3</sup> The remainder of this Order discusses whether the Enforcement

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from state agencies and five from industry participants, with views ranging from general support to outright opposition.<sup>7</sup>

As explained above and in the Notice, the Commission’s statutory mandate to approve or disapprove a proposed Authority rule is limited to considering only whether the proposed rule “is consistent with” the Act and the Commission’s procedural rule.<sup>8</sup> The Commission stated that it would therefore focus on those comments that discuss the statutory decisional criteria: whether the proposed rule is consistent with “the specific requirements, factors, standards, or considerations in the text of the Act and the Commission’s procedural rule.”<sup>9</sup> Nevertheless, the Commission received some comments that were unrelated to whether the proposed rule is consistent with the Act or procedural rule, and those comments have little bearing on the Commission’s determination.<sup>10</sup>

Several recurring concerns expressed by commenters merit only brief mention at the outset; because they were addressed extensively by the Commission’s Racetrack Safety Order, which was published toward the end of this comment period, these commenters may have been unable to benefit from its analysis. Several commenters again criticized the comment period as

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consideration of the Authority’s Response is consistent with the process the Securities and Exchange Commission uses in approving or disapproving proposed rules from self-regulatory organizations under its purview, such as the Financial Industry Regulatory Authority. HISA’s sponsors “closely modeled” the Act after SEC’s oversight of FINRA. Fed. Trade Comm’n,

, 86 Fed. Reg. 54,819, 54,822 (Oct. 5, 2021).

<sup>7</sup> Lab. Accreditation Cmt. at 1 (“We are generally supportive of the proposed rules.”), Cmt. of Thoroughbred Horsemen’s Assocs., Inc. et al. (“Thoroughbred Horsemen Cmt.”) (Mar. 4, 2022), at 1, <https://www.regulations.gov/comment/FTC-2022-0014-0010> (“[T]he Authority’s proposed methodologies for assessments on both the interstate and intrastate level are inconsistent with the Act, fundamentally flawed, and lack the necessary evidentiary support for adoption.”).

<sup>8</sup> 15 U.S.C. § 3053(c)(2).

<sup>9</sup> Notice, 87 Fed. Reg. at 444. The Notice also gave guidance to would-be public commenters whose comments would not address the statutory decisional criteria but instead would more generally “bear on protecting the health and safety of horses or the integrity of horseraces and wagering on horseraces.”

<sup>10</sup> As the Commission previously noted, such comments may still be “helpful or productive to the broader effort of improving the safety and integrity of horseracing. In many instances, comments advanced specific suggestions for improving the rules, and the Authority has stated that it will use those comments when it proposes future rule modifications.” Racetrack Safety Order at 4 n.12.

too short.<sup>11</sup> Others again decried the piecemeal submission of proposed rules, which deprives commenters of the ability to review them holistically, or the fact that the Authority has not submitted its bylaws for Commission approval.<sup>12</sup> For the reasons previously given in the Racetrack Sab 8.04 jE

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As for those states where the state racing commission does not elect to remit fees, the Authority collects the fees: “the Authority shall, not less frequently than monthly, calculate the applicable fee per racing start multiplied by the number of racing starts in the State during the preceding month.” 15 U.S.C. § 3052(f)(3)(A). The Authority must “allocate equitably” the applicable fee “among covered persons involved with covered horseraces pursuant to such rules as the Authority may promulgate.” 15 U.S.C. § 3052(f)(3)(B). The Authority then assesses the equitably allocated fee on covered persons and collects the fee assessed “according to such rules as the Authority may promulgate.” 15 U.S.C. § 3052(f)(3)(C)(i). State racing commissions that do not elect to remit fees “shall not impose or collect from any person a fee or tax relating to anti-doping and medication control or racetrack safety matters for covered horseraces.” 15 U.S.C. § 3052(f)(3)(D). Principally, these are “the specific requirements, factors, standards, or considerations in the text of the Act” with which the Commission will assess the consistency of the Authority’s Assessment Methodology proposed rule.<sup>15</sup>

Proposed Rule 8510 incorporates definitions from the Act for “Covered Horserace” and “Racetrack” and introduces three newly defined terms that build on one another: “

means the number of starts in Covered Horseraces in the previous 12 months as reported

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Horseraces starts; then

(3) the sum of the product of the calculation in (c)(2) and 50 percent of the quotient calculated in (c)(1) is multiplied by the Projected Starts in the applicable State.

Provided however, that no State's allocation shall exceed 10 percent of the total amount of purses for Covered Horseraces as reported by Equibase in the State (not including the Breeders' Cup World Championships Races). All amounts in excess of the 10 percent maximum shall be allocated proportionally to all States that do not exceed the maximum, based on each State's respective percentage of the Annual Covered Racing Starts.

8520(e)

If a State racing commission does not elect to remit fees pursuant to 15 U.S.C. 3052(f)(2):

(1) The Authority shall on a monthly basis calculate and notify each Racetrack in the State of the applicable fee per racing start for the next month based upon the following calculations:

(i) Calculate the amount due from the State as if the State had elected to remit fees pursuant to 15 U.S.C. 3052(f)(2) (the "Annual Calculation").

(ii) Calculate the number of starts in Covered Horseraces in the previous twelve months as reported by Equibase (the "Total Starts").

(iii) Calculate the number of starts in Covered Horseraces in the previous month as reported by Equibase (the "Monthly Starts").

(iv) The applicable fee per racing start shall equal the quotient of Monthly Starts, divided by Total Starts, multiplied by the Annual Calculation.

(2) The Authority shall on a monthly basis calculate and notify each Racetrack in the jurisdiction of the following calculations:

(i) Multiply the number of starts in Covered Horseraces in the previous month by the applicable fee per racing start calculated pursuant to paragraph (e)(1)(iv) above.

(ii) The calculation set forth in 15 U.S.C. 3052(f)(3)(A) shall be equal to the amount calculated pursuant to paragraph (e)(2)(i) (the "Assessment Calculation").

(3) The Authority shall allocate the monthly Assessment Calculation proportionally based on each Racetrack's proportionate share in the total purses in



Authority shall notify the Racetrack that the Covered Persons Allocation is approved. If a Racetrack fails to submit its proposed Covered Person Allocation in accordance with the deadlines set forth in this paragraph, or if the Authority has not approved the Covered Persons Allocation in accordance with this paragraph, the Authority shall determine the Covered Persons Allocation for the Racetrack. Upon the approval of or the determination by the Authority of the Covered Persons Allocation, the Racetrack shall collect the Covered Persons Allocation from the covered persons involved with Covered Horseraces.<sup>20</sup>

Some commenters denominated proposed Rule 8520(c) as the “interstate” methodology and proposed Rule 8520(e) as the “intrastate” methodology,<sup>21</sup> a useful shorthand this Order will employ. Because the new definitions of proposed Rule 8510 interrelate so directly with the two methodologies described, this Order will discuss the public comments, Authority’s response, and Commission’s findings organized by the two methodologies rather than by numerical rule provision.

**a. Rule 8520(c)—*Interstate Methodology***

Proposed Rule 8520(c)’s interstate methodology relies on a proposed definition of “Annual Covered Racing Starts,” which itself relies on the novel proposed definitions of “Projected Starts” and “Projected Purse Starts.” Under the proposed methodology, each state’s fee assessment would be based on Annual Covered Racing Starts, considering both “Projected Starts” and “Projected Purse Starts.”

Projected Starts is defined as the number of times that covered horses are projected to run in covered horseraces (races of Thoroughbreds on which wagers are placed) in the coming year (based on the previous year’s number of starts as reported by an industry organization, Equibase).<sup>22</sup>

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<sup>20</sup> at 9,352–53.

<sup>21</sup> , Thoroughbred Horsemen Cmt. at 1.

<sup>22</sup> Covered horseraces are those that involve wagering on “covered horses,” which are, as of the Act’s passage, Thoroughbreds that have been timed in a workout and not yet retired, but in the future covered horses may include

Projected Purse Starts relies on Equibase data for starts and total purses. By incorporating purses alongside Projected Starts into its definition of Annual Covered Racing Starts, the Authority’s proposed interstate methodology assesses higher fees to states with bigger purses as well as to those with more starts. “The Authority was not in favor of simply treating all racing starts in a given State uniformly as a ‘covered racing start’ because this would result in an inequitable allocation of costs. For example, if all starts in all races at all tracks were treated equally, West Virginia would have a larger proportionate share than Kentucky, even though the purses and entry fees generated by the Kentucky races dwarf those generated by West Virginia races.”<sup>23</sup> The Authority contended that using only Projected Starts would have been unfaithful to the Act, whose “requirements for proportionality among States, equitable allocation among Covered Persons within each State and the requirement imposed on the Authority to establish by rule ‘a formula or methodology for determining assessments’ demonstrate that basing allocations on starts alone would not meet the full requirements of the Act.”<sup>24</sup>

A final component of the proposed interstate methodology, in the final proviso of proposed Rule 8120(c), is a cap on any state’s amount so that no state needs to pay more than 10% of its total purse. The Authority justified this cap, in the Notice, as necessary to “avoid an inequitable or skewed allocation.”<sup>25</sup>

Nine of the ten commenters addressed the proposed interstate methodology, including all five state racing commissions. The California Horse Racing Board (“California Board”) noted that, until the Authority sets its budget, it is impossible to know whether states might hit the 10%

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other kinds of horses depending on the affirmative election of a state racing commission or a “breed governing organization.” 15 U.S.C. § 3051(4)–(5).

<sup>23</sup> Notice, 87 Fed. Reg. at 9,350. & n.13 (“Higher purses greatly influence the ability of Covered Persons to bear costs. It is also anticipated that stakes races and graded stakes races will have higher testing costs.”)

<sup>24</sup> at 9,350 n.14.

<sup>25</sup> at 9,350 n.16.

cap, which the California Board “doubts meets the Commission’s criteria that the proposed rule is consistent with the Act.”<sup>26</sup> Its comment reiterated the Act’s three express considerations for the interstate assessment, which were the annual budget as approved by the Board, the projected amount of covered racing starts, and other sources of Authority revenue: “Whether ultimately equitable or not, the Act only refers to covered racing starts. In contrast, the Authority’s proposed formula considers total purses, . . . which is not a basis of fee calculation under the Act.”<sup>27</sup> The California Board parsed the Act and concluded that the Authority’s references in the Notice to statutory language such as “proportionate share” and “equitably” were inapposite to the question of how to calculate each state’s allocation. Ultimately, the California Board “agrees that there are more equitable ways to assess fees than what was designated in the Act, [but] . . . the

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Authority had received, inquiring about whether states that enter into voluntary agreements with the Authority to conduct certain tasks will get credit for tho

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that will fall on New York racing stakeholders.”<sup>49</sup> The New York Horsemen also echoed the Thoroughbred Horsemen in urging the Commission to adopt an interim final rule.

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“appreciate the Authority looking to purse money in addition to starts when it determines the allocation of the assessment.”<sup>55</sup> But it objects to the 10% cap as “favorable to New York, Florida, Kentucky, and California.”<sup>56</sup>

The Authority’s response to these comments about its proposed interstate methodology disagreed with the majority of the commenters who contended that the consideration of purses alongside starts was inconsistent with the Act.<sup>57</sup> The Authority described the requirement of § 3053(a)(11) for “a formula or methodology for determining assessments” as a “broad directive.”<sup>58</sup> Its response placed particular weight on § 3052(f)(1)(C)(ii)(I)’s phrase “based on” in the Act’s command that the amount owed be “based on” the Authority’s budget and “the projected amount of covered racing starts for the year in each State.” “If Congress had intended those two factors to constitute the entire and exclusive grounds for calculating assessments, there would have been no reason for it to direct the Authority to develop, and for the FTC to consider and approve, a rule setting forth ‘a formula or methodology for determining assessments.’ ”<sup>59</sup> The Authority relied on three reported decisions from federal courts of appeals for its proposition that “based on” is synonymous with “arising from” and refers to a starting point or foundation—exactly the role, the Authority said, that “covered racing starts” plays in its Annual Covered Racing Starts.<sup>60</sup> It also contended that a contrary reading would lead to “absurd results.”<sup>61</sup>

According to the Authority, the 10% cap was misunderstood by the Texas Commission and Remington Park, whose “contention that New York, Florida, Kentucky and California will

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at 2.

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at 2. Remington Park cites the same data as the Texas Commission.

Tex. Comm’n cmt. at 4.

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Authority’s Response at 4–5.

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at 4

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unfairly benefit from the cap is incorrect.”<sup>62</sup> The Authority’s response explained why by proposing a hypothetical annual budget of \$50,000,000 and using the 2019 Equibase data, in

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requires the Authority no later than 90 days before the program effective date of July 1, 2022, to determine and provide to each State racing commission the estimated amounts required from the State to fund HISA,” and “the Authority will comply with the 90-day deadline imposed by Congress.”<sup>66</sup> But because the Commission needs the 60 days that the Act affords it to take public comments on the Authority’s proposed rules, consider those comments, and issue a reasoned decision approving or disapproving those rules, the Commission’s procedural rule requires the Authority to prepare and submit the Assessment Methodology proposed rule well in advance of its statutory budget deadline.<sup>67</sup>

Despite several arguments in comments against considering purses in the definition of Annual Covered Race Starts, the Commission finds that the proposed interstate methodology is consistent with the Act, which requires the Authority to develop “a formula or methodology for determining assessments,” § 3053(a)(11). These amounts owed “shall—(I) be based on—(aa) the annual budget of the Authority for the following calendar year, as approved by the Board; and (bb) the projected amount of covered racing starts for the year in each State; and (II) take into account other sources of Authority revenue,” § 3052(f)(1)(C)(i). The relevant provisions from proposed Rule 8520(c) are that, after the Authority’s Board approves its budget and other sources of revenue are taken into account, “the Authority shall allocate the calculation due from each State pursuant to 15 U.S.C. § 3052(f)(1)(C)(i) proportionally by each State’s respective percentage of the Annual Covered Racing Star(ve)4 (nhcen)-4 3gnd other

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The statutory-consistency question before the Commission is thus whether the methodology of proposed Rule 8520(c) is consistent with the Act's requirement that it be "based on . . . the projected amount of covered racing starts for the year in each State," § 3052(f)(1)(C)(ii). The plain meaning of the phrase "based on" confirms that the proposed methodology is consistent with the Act; without a further restriction such as "solely" or "exclusively" in the Act's text, the phrase is naturally non-exhaustive. Here, "projected amount of covered racing starts" is undefined in the Act, and the Authority chose to define it as Annual Covered Racing Starts, while opponents of its approach would have defined it exclusively as the Authority defined Projected Starts (in other words, no consideration of purses). But the proposed interstate methodology is still "based on" Projected Starts: As a state's Projected Starts increase its assessment increases, and as a state's Projected Starts decrease its assessment decreases. Projected Starts are thus the starting point and the foundation of the amount owed.

Public commenters' arguments in favor of a finding of inconsistency were unpersuasive. The Thoroughbred Horsemen, for example, did not address the key, ambiguous phrase "based on," although they noted that Projected Purse Starts is a "misnomer" because it represents a financial number rather than starts. This may be true, but it does not compel a finding of inconsistency with the Act.

The Authority's response persuasively illustrated with examples that the Oklahoma Commission and Remington Park misunderstood the effect of the 10% cap in the proviso to proposed Rule 8520(c)—it does not benefit big-purse states such as California, Florida, Kentucky, and New York but instead will require them to marginally increase their allocations to ensure that no state pays more than 10% of its own total purse in assessments. The other commenters that objected to the 10% cap did not identify an inconsistency with the Act. W

the potential inconsistency of including Projected Purse Starts alongside Projected Starts within the definition of Annual Covered Race Starts merited more discussion, the Commission finds that the minor adjustments that may be required to bring small-purse states' assessments below 10% of their total purses still leave each state's assessment "based on" covered race starts since the small-purse states' reductions "shall be allocated proportionally to all States that do not exceed the maximum, each State's respective percentage of the Annual Covered Racing Starts."<sup>70</sup>

While the Commission concludes that the interstate methodology proposed by the Authority is consistent with the Act, it is worth noting that there are likely multiple methodologies that the Authority could have proposed that would be consistent with the Act. Accordingly, the Commission encourages states that would prefer another methodology to continue engaging with the Authority, which in its response committed to keeping an open mind about the interstate methodology of the Assessment Methodology proposed rule: "The Authority will review [it] on an annual basis to ensure that the formula that forms the basis of the assessments is equitable and, as a part of this review, the Authority will consider the comments that argue otherwise." The Authority's first proposed rule modification to Assessment Methodology is due on March 3, 2023.<sup>71</sup>

**b. Rule 8520(e)—*Intrastate Methodology***

Proposed Rule 8520(e)'s intrastate methodology applies in states that do not elect to remit fees under § 3052(f)(2)(A). It builds on proposed Rule 8520(c)'s calculations and then relies on two new numbers: "Total Starts" is "the number of starts in Covered Horseraces in the previous twelve months as reported by Equibase" and "Monthly Starts" is the same number in

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<sup>70</sup> Notice, 8

the previous month.<sup>72</sup> The “applicable fee per racing start” that the Authority must calculate and provide monthly under § 3052(f)(3)(A) is calculated by taking the state’s allocation from Rule 8520(c) as though it were remitting fees and multiplying it by Monthly Starts and then dividing it by Total Starts.<sup>73</sup> Each non-remitting state’s monthly allocation owed is the “applicable fee per racing start” multiplied by the Monthly Starts.<sup>74</sup> Section 3052(f)(3)(B) states that the Authority “shall allocate equitably” this monthly allocation owed by collecting it “from among covered persons involved with covered horseraces pursuant to such rules as the Authority may promulgate.” The Authority decided that it would achieve equitable allocation by collecting directly from the racetracks based on each racetrack’s share of the total purse in that state over the next month.<sup>75</sup> Each racetrack, for its part, must submit an annual proposal to the Authority describing how it will equitably allocate its amount owed among covered persons involved with covered horseraces at the racetrack.<sup>76</sup> If a racetrack fails to timely submit a proposal or the Authority finds the proposal inequitable, the Authority determines the equitable allocation for the racetrack.<sup>77</sup>

The intrastate methodology received fewer comments than the interstate methodology.<sup>78</sup> Remington Park objected that the proposed intrastate methodology “places the burden of collection on the Racetrack.”<sup>79</sup> Remington Park argued that this burden properly belongs with the Authority: “The Authority is responsible for collecting its fees and cannot delegate that

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<sup>72</sup> Notice, 87 Fed. Reg. at 9,352 (proposed Rule 8520(e)(1)).

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<sup>74</sup> (proposed Rule 8520(e)(2)).

<sup>75</sup> (proposed Rule 8520(e)(3)).

<sup>76</sup> (proposed Rule 8520(e)(4)).

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<sup>78</sup> Comments that might equally apply to both, such as distrust of Equibase data’s reliability, were addressed in the discussion of comments about the interstate methodology.

<sup>79</sup> Remington Park cmt. at 3.

obligation to the racetracks.”<sup>80</sup>

The Florida Horsemen expressed a similar concern: “A racetrack does not have the legal authority to assess fees to Covered Persons or to collect such fees as suggested in the statute (‘foal registration fees, sales contributions, starter fees, and track fees, and other fees on covered persons’).”<sup>81</sup> A conflict of interest is inherent, stated the Florida Horsemen, in “allowing one stakeholder the ability to determine cost for all stakeholders, one that would leave the methodology vulnerable to litigation.”<sup>82</sup> Finally, the Florida Horsemen objected to the use of purse to divide the monthly amount owed among racetracks in a state: “Under no circumstances should purse money be the ONLY factor used to determine the assessment of the cost of HISA. We do not believe it should be a part of the calculation at all. There is no justification, legal or otherwise, for penalizing one racetrack to the benefit of another.”<sup>83</sup>

The Thoroughbred Horsemen identified “two flaws with the intrastate assessment mechanism: (1) it empowers one covered stakeholder (racetracks) to set and collect fees from other stakeholders, in a departure from existing practice and the Act’s text, and (2) it relies entirely on purse-driven allocation formula, which also ignores the Act’s text to consider racing starts as part of the allocation.”<sup>84</sup> The Thoroughbred Horsemen argued that having racetracks take the lead for determining equitable allocation of assessments “sets the stage for discord . . . and could lead disaffected horsemen, for example, to invoke their protected rights under the Interstate Horseracing Act, and cause a cessation of racing and/or simulcasting.”<sup>85</sup> The Thoroughbred Horsemen concluded that the intrastate methodology “is squarely inconsistent

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<sup>81</sup> Fla. Horsemen cmt. at 3 (quoting 15 U.S.C. § 3052(f)(2)(D)).

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<sup>83</sup> at 4 (underlining and capitalization in original)

<sup>84</sup> Thoroughbred Horsemen cmt. at 9.

<sup>85</sup> (citing 15 U.S.C. § 3004).

with the Act,” which, in their view, places the burden on the Authority to “perform the allocation, assessment, and collection” and requires “per-start allocation” rather than one “based on a purse structure.”<sup>86</sup> The New York Horsemen stated the same concern.<sup>87</sup>

The Authority’s response defended its choice to place the responsibility on covered racetracks to collect fees, subject to its approval of the racetrack’s proposal for equitably allocating assessments among covered persons.<sup>88</sup> As for several commenters’ concerns about conflicts of interest that might arise from assigning racetracks this task, the Authority responded: “Rule 8520(e)(4) does not give the racetracks the unfettered discretion to determine the allocations for Covered Persons. The racetracks are required to submit a proposal of the allocation of the Assessment Calculation among Covered Persons to the Authority.”<sup>89</sup> And the Authority stated that it will approve the proposals only if it determines that the proposal “allocated equitably.”<sup>90</sup> If the Authority finds the standard unmet, then “the Authority determines the Covered Persons Allocation for the applicable racetrack.”<sup>91</sup> The Authority stated that it planned to issue guidance on the subject under 15 U.S.C. § 3054(g).

As for comments that argued that having racetracks collect the equitable allocations is inconsistent with the Act, the Authority replied that “the Act empowers the Authority to collect these fees ‘according to such rules as the Authority may promulgate,’ . . . precisely what Rule 8520(e)(4) does . . . [because] racetracks already have accounting systems in place to collect and disburse money from and to owners, jockeys, and trainers.”<sup>92</sup>

The Commission finds that the Authority’s proposed intrastate methodology is consistent

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<sup>86</sup> at 9–10.

<sup>87</sup> N.Y. Horsemen at 5–6.

<sup>88</sup> Authority’s Response at 5–6.

<sup>89</sup> at 5.

<sup>90</sup> at 6.

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<sup>92</sup> (quoting 15 U.S.C. § 3052(f)(3)(C)).

with the Act. The commenters' contention that, by issuing a rule requiring covered racetracks to collect equitable allocations from covered persons under an Authority-approved proposal, the Authority has unlawfully delegated a statutory command is unavailing. Instead, the Authority is exercising the Act's permission for it to "collect such fee according to such rules as the Authority may promulgate." 15 U.S.C. § 3052(f)(3)(C)(i). That the Authority collects the assessed fee only from racetracks instead of from a broader set of covered persons is of no moment. So too for the complaint that the Authority unlawfully delegated the allocation required by § 3052(f)(3)(B)—it retains ultimate control over the equitable allocation, stepping in if a racetrack does not timely propose an equitable allocation or proposes an inequitable allocation, and no provision of the Act conflicts with the Authority-racetrack partnership.

The Commission has previously noted that guidance, which the Authority is permitted to issue and said it plans to here, must be limited to the circumstances outlined in the Act.<sup>93</sup> The same concern arises here with the contemplated guidance concerning equitable allocations in states that elect not to remit fees. If the contemplated guidance is "an interpretation of an existing rule, standard, or procedure of the Authority; or (ii) a policy or practice with respect to the administration or enforcement of such an existing rule, standard, or procedure," that is allowed.<sup>94</sup> Guidance must "not have the force of law."<sup>95</sup> Anything that would have the force of law must be submitted to the Commission for public comment and approval or disapproval.

Two commenters, the Thoroughbred Horsemen and New York Horsemen, raised a plausible inconsistency about the interstate methodology's use of purse information. The Act

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<sup>93</sup> Racetrack Safety Order at 28 ("The Commission notes, however, that Guidance may be an inappropriate vehicle for the Authority's future educational program proposals inasmuch as the educational programs are required—only proposed rules approved by the Commission can impose binding requirements, and the broader



provides that, in states that do not elect to remit fees, “the Authority shall, not less frequently than monthly, calculate the applicable fee per racing start multiplied by the number of racing starts in the State during the preceding month.” 15 U.S.C. § 3052(f)(3)(A). There is no “based on” in this statutory direction, and the number of racing starts in a state’s preceding month is a direct multiplier. But “the applicable fee per racing start” is not defined elsewhere in the Act. Proposed Rule 8520(e) defines it in a reasonable way that includes taking the most recent month’s starts (“Monthly Starts”) divided by the most recent year’s starts (“Total Starts”) and multiplying that ratio by the amount the state would have remitted if it elected to remit fees. The point of the calculation obligation of § 3052(f)(3)(A) is to facilitate predictable monthly billing (as distinguished from the annual fees remitted by states), not to preclude the consideration of purses. So too the Authority’s decision to use purses to allocate fees to racetracks within a state is reasonable and not precluded by any provision of the Act.

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For the preceding reasons, the Commission finds that the Horseracing Integrity and Safety Authority’s proposed rule on Assessment Methodology is consistent with the Horseracing Integrity and Safety Act of 2020 and the Commission’s procedural rule governing submissions under the Act. Accordingly, the Assessment Methodology rule is APPROVED.