

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

December 23, 2024

I. Decision of the Commission: HISA’s Proposed Modification of the Assessment Methodology Rule is Approved

The Horseracing Integrity and Safety Act of 2020

¹ (“the Act”) recognizes a self-regulatory nonprofit organization, the Horseracing Integrity and Safety Authority (“HISA” or “the Authority”), which is charged with developing proposed rules on a variety of subjects relating to horseracing.² Those proposed rules and subsequent proposed rule modifications take effect only if approved by the Federal Trade Commission (“the Commission”).³ At issue here is a proposed modification to the Authority’s Assessment Methodology Rule, which the Authority submitted and the Commission published for public comment in the Federal Register (the “Notice”),⁴ as required by the Act.⁵ The current Assessment Methodology Rule was first proposed by the Authority (the “Original Rule”) in February 2022,⁶ and approved by

¹ 15 U.S.C. §§ 3051–3060.

² See id § 3053(a).

³ See id § 3053(b)(2).

⁴ See Fed. Trade Comm’n, Notice of Horseracing Integrity and Safety Authority (HISA) Proposed Rule Modification, 89 Fed. Reg. 84,600 (Oct. 23, 2024), <https://www.federalregister.gov/documents/2024/10/23/2024-24567/horseracing-integrity-and-safety-authority-assessment-methodology-rule-modification>.

⁵ 15 U.S.C. § 3053(b)(1).

⁶ Fed. Trade Comm’n, Notice of Horseracing Integrity and Safety Authority (HISA) Proposed Rule, 87 Fed. Reg. 9,349 (Feb. 18, 2022), [h22](#)

Commission Order on April 1, 2022.⁷ The Original Rule was subsequently amended following a proposed modification by the Authority (the “Modified Rule”),⁸ approved by Commission Order on January 9, 2023.⁹

Under the Act, “the Commission shall approve a proposed rule or modification if the Commission finds that the proposed rule or modification is consistent with” the Act and applicable rules approved by the Commission.¹⁰ By this Order, for the reasons that follow, the Commission finds that the Authority’s proposed modification of the Assessment Methodology Rule is consistent with the Act and the Commission’s rules and therefore approves the proposed rule modification, which will take effect on January 22, 2025.

II. Discussion of Public Comments and the Commission’s Findings

Under the Act, the operations of the Authority are funded by assessments levied either on State racing commissions or, if the State racing commissions do not elect to remit fees on behalf of Covered Persons within the State, on Covered Persons subject to the Act.¹¹ The purpose of the Assessment Methodology Rule is to establish “a formula or methodology for determining assessments described in section 3052(f) [of the Act].”¹² The Notice explains that the Authority’s proposed modification to the Assessment Methodology Rule focuses on three principal changes: (1) eliminating consideration of the Projected Purses Paid from the current

⁷ Fed. Trade Comm’n, Order Approving the Assessment Methodology Rule Proposed by the Horseracing Integrity and Safety Authority (the “Original Order”) (Apr. 1, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Order%20re%20HISA%20Assessment%20Methodology.pdf.

⁸ Fed. Trade Comm’n, Notice of Horseracing Integrity and Safety Authority (HISA) Proposed Rule Modification Fed. Reg. 67,915 (Nov. 10, 2022), <https://www.federalregister.gov/documents/2022/11/10/2022-24609/hisa-assessment-methodology-rule-modification>.

⁹ Fed. Trade Comm’n, Order Approving the Assessment Methodology Rule Modification Proposed by the Horseracing Integrity and Safety Authority (Jan. 9, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/order_re_hisa_assessment_methodology_modification_not_signed_002_0.pdf.

¹⁰ 15 U.S.C. § 3053(c)(2).

¹¹ Id. § 3052(f).

¹² Id. § 3053(a)(11).

assessment equation and instead basing assessments solely on Projected Starts; (2) establishing a default rule for the equitable allocation among Covered Persons of the applicable fee per racing start for the Assessment Calculation for each Racetrack; and (3) clarifying the language of several provisions for greater precision.¹³

As noted above, the Commission must approve a proposed rule modification if the Commission finds that the proposed rule modification is consistent with the Act and the Commission's rules.¹⁴ As a threshold matter, the Commission finds that the Authority's proposed modification of the Assessment Methodology Rule is consistent with the Commission's rules.¹⁵ This finding formally confirms the previous determination made by the Office of the Secretary that the Authority's submission of its proposal wa

The amount each State pays “shall 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 “take into account other sources of Authority revenue.”²⁵ The Act does not define the term “covered racing starts.”

Once a State’s proportionate share of fees is calculated, State racing commissions have the option to collect and remit the amount required from their State if they notify the Authority of their election to do so.²⁶ This election requires the State racing commission to remit fees “according to a schedule established in rule developed by the Authority and approved by the

Doping and Medication Control (“ADMC”) program for over one year,” and its opinion of an appropriate allocation of costs has changed.³³ The Authority initially believed:

that stakes races and graded stakes races will have higher testing costs and that horses that compete in such races will be subjected to more vigorous out-of-competition testing, which is an expensive element of a vigorous drug testing program. In addition, it is anticipated that drug disqualifications in stakes races will result in higher enforcement costs. Currently, much of the protracted and costly litigation in the states concerns drug positive disqualifications in stakes races.³⁴

HISA stated that its experience with implementing the Act has differed from its original predictions, and that HISA’s expenses “after the initial implementation period have turned out to be closely correlated to starts and not to purse amounts or the grade of a race.”³⁵

The Authority asserts that Covered Persons have been less likely to challenge potential program violations based solely on purse amounts, in part because of how the ADMC rules operate to automatically disqualify race results regardless of a finding of fault.³⁶ Instead, the Authority believes that enforcement “proceedings are more likely to occur based on the classification of the Prohibited Substance involved,” since cases involving banned substances are subject to a default sanction of a two-year period of ineligibility.³⁷ As a result, cases involving banned substances have a higher chance of being litigated “regardless of the place in which the Covered Horse finished or the category of the race at issue.”³⁸ In addition, the ADMC rules require that testing of out-of-competition horses be driven in part 2

provide competitive purses due to restrictions on their supplementing purses with other gaming revenues.⁴³ Commenters predicted that the financial burden on Racetracks offering smaller purses would lead the tracks to limit their racing seasons or close, causing a contraction of the industry,⁴⁴ and expressed concerns that local economies would be impacted, including a possible loss of work for employees of such tracks.⁴⁵ Some commenters predicted that some Racetracks

<https://www.regulations.gov/comment/FTC-2024-0043-0019> (“This is a transfer to the smaller tracks that can’t afford the excessive costs of Hisa [sic]”); Cmt. of K. Kaufeld, <https://www.regulations.gov/comment/FTC-2024-0043-0021>; Cmt. of Ohio HBPA, <https://www.regulations.gov/comment/FTC-2024-0043-0023>; Cmt. of Philip Ziegler, <https://www.regulations.gov/comment/FTC-2024-0043-0025> (“For smaller tracks such as the one I work at, Emerald Downs, our assessment will nearly double”); Cmt. of Horseshoe Indianapolis, Indiana Horsemen’s E

may opt to cease simulcasting their signal for interstate off-track or adp de.758 9eTc 0.73s

starts decreased 24% from 2024 to 2025, but the Authority’s budget increased by \$2.85 million, resulting in a 37% increase to the estimated per-start cost.⁵⁰

Finally, some commenters expressed reservations about the Commission moving forward with the proposed rule modification while legal challenges to the constitutionality of the Act are pending, and while the United States Supreme Court is considering taking up one or more Circuit Court decisions for review.⁵¹

The Authority responded to many of the public comments in a letter to the Commission.⁵² With respect to the comments that expressed concerns over the potential negative impact of the Authority’s proposed changes on smaller racetracks with frequent racing and low purse structures, the Authority merely reiterated the observations that it made in the Notice regarding its experience with the implementation of its rules and its reasoning for modifying the methodology now, and did not respond to the substance of the comments.⁵³

The Authority did respond to the comments suggesting that HISA apportion fees based on a percentage of wagering or on “funds generated by a track’s casino for purses,” or that HISA require ADW companies to pay a portion of the fees.⁵⁴ HISA pointed to Section 3052 of the Act, which provides that annual assessments “shall be based on ... the annual budget of the Authority for the calendar year [and] ... the projected amount of covered racing starts for the year in each state.”⁵⁵ HISA further noted that Section 3052(f) specifies who is responsible to pay the assessments (directly and indirectly), and noted that HISA is “actively exploring alternative

⁵⁰ Cmt. of MRC; Cmt. of Philip Ziegler; Cmt. of Penn.

⁵¹ Cmt. of WV Racing Commission; Margaret Haas (“HISA litigation is currently in the Supreme Court. It is not appropriate timing for changes in fee assessment to horsemen”); Cmt. of Charles Town HBPA; Cmt. of Mountaineer (“it does not seem prudent to implement new rules while there is significant active litigation”).

⁵² Authority’s Response, *supra*note 19.

⁵³ *See supra* pp. 6-8.

⁵⁴ Authority’s Response at 7.

⁵⁵ *Id.* (citing 15 U.S.C. § 3052(f)(1)(C)(ii)).

sources of funding to offset a portion of the costs currently being borne by the industry.”⁵⁶ The Authority’s response did not directly address the commenters’ proposed alternative sources for apportioning assessments.

As to the comments questioning HISA’s assertion that there is a correlation between HISA’s costs and starts, the Authority first pointed out that its budget increase from 2024 to 2025 reflects fixed cost increases, and further acknowledged the decrease in the number of starts in relevant jurisdictions. According to the Authority, more than two-thirds of the overall decrease in starts stems from the exclusion of three states (Louisiana, West Virginia, and Colorado) in the 2025 budget “due to the expectation that they will not be under HISA’s purview.”⁵⁷ The Authority restated its opinion that ADMC program costs—which comprise the majority of the Authority’s costs—“have been more aligned with starts since the Authority’s inception than they have been with purses.”⁵⁸

The Authority also briefly addressed the comments that urge the Authority to refrain from taking further action until the Supreme Court rules on the constitutionality of the Authority. According to the Authority, “[t]here is no legal basis for these comments.”⁵⁹ The Authority noted that the Supreme Court “granted the Authority’s emergency application to stay the Fifth Circuit’s mandate pending the disposition of the Authority’s certiorari petition seeking review of whether the Authority’s enforcement provisions facially violate the private-nondelegation doctrine.”⁶⁰

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 8.

⁶⁰ *Id.*

Having considered the text of

“there are likely multiple methodologies that the Authority could have proposed that would be consistent.”⁶⁹ The Commission encouraged interested parties that prefer a different methodology to engage with the Authority on the issue, and the Authority committed to reviewing its methodology on an annual basis.⁷⁰ We expect that the Authority will continue to review its assessment methodology on a regular basis, and if the potential adverse consequences described in the comments come to bear, we trust that the Authority will consider whether further modification to its interstate methodology is warranted.

B.

conducted within the State over the relevant month.⁷⁴ This methodology, which has been referred to as the “intrastate methodology,”⁷⁵ is contained in HISA’s Rule 8520(e). The methodology placed the responsibility for collecting fees from Covered Persons on the Racetracks, pursuant to a proposed equitable allocation to be submitted by the Racetracks and approved by the Authority.⁷⁶ In the Modified Rule, the Authority added a provision requiring the Authority to do a “true-up” calculation comparing the projected start and purse amounts with the actual numbers for these amounts after the end of the calendar year, and then to adjust current year allocations to account for any differences between the estimated and actual amounts from

estimated total annual starts, multiplying that

Another commenter stated that Racetracks should not be required to collect and remit the equitably allocated fees from Covered Persons under Rule 8520(e)(3).⁹⁰ The Authority replied that “[w]here the assessments are being coll

allocation, then that allocation is deemed equitable. If the Covered Persons cannot agree as to the allocation, then the proposed modification would set a default allocation—50% from Racetracks, 43.50% from Owners, 5.00% from Trainers, and 1.50% from Jockeys—which the Authority says is a “reasonable estimation of the overall percentage” each one of those classes of covered persons receives out of purse funds.⁹⁵

The Commission concludes that this approach is consistent with the Act. If the Covered Persons agree as to how the costs are to be allocated and paid, then there is no reason to second-guess their conclusion that the methodology is appropriate and equitable. As for the default allocations, the Authority has been in operation for over three years, and it is familiar with the roles of each class of Covered Persons and how they are compensated. In the absence of any evidence that the Authority incorrectly estimated the percentage of purses paid to each class of Covered Persons, the Commission concludes that this default allocation is consistent with the Act.

That the default allocation does not include other Covered Persons—for example, grooms, veterinarians, and breeders—does not change that conclusion. The Act does not mandate that the allocation be made among all Covered Persons; rather, it simply requires the allocation to be “equitable.” Excluding from the calculation low-wage workers (like grooms), who may not receive a share of any winnings, is a reasonable approach and consistent with notions of fairness, the touchstone of equitability. Exempting veterinarians is also appropriate. Given the current shortage of equine veterinarians, allocating fees to that group could pose a risk to racetrack safety if it disincentivizes them from continuing to treat Covered Horses. As for breeders, the Commission notes that Section 3052(f)(3)(B) of the Act requires the Authority to

equitably allocate assessments “among covered persons involved with covered horseraces,” and not all breeders are “involved with covered horseraces.”⁹⁶ Given that a breeder who is not otherwise an Owner, Trainer, or other Covered Person may have ceased his or her relationship to a horse by selling it prior to that horse becoming a Covered Horse subject to the Act, the Authority’s hesitation to allocate a portion of the assessment fees to breeders appears to be consistent with the statutory framework. The Commission further concludes that limiting the allocations to Racetracks, Owners, Trainers, and Jockeys is consistent with the discretion afforded to the Authority under the Act to determine what is equitable. The Authority states that it is committed to “consider[ing] in the future whether it is appropriate and legally permissible to include breeders in the allocation.” We trust that it will.

Finally, as for the proposed modification to Rule 8520(f) to no longer provide a process for disputing the Equibase numbers, the Commission concludes that the proposed change is consistent with the Act. The Original Rule did not provide such a mechanism—it first appeared in the Modified Rule—and the Commission approved the Original Rule as consistent with the Act. Given that lack of any comments objecting to the removal of this provision, the Commission sees no reason to deviate from its original conclusion that a rule without a dispute process is consistent with the Act.

C. Clarification of Rule Language and Other Changes

In addition to the proposed changes to the interstate and intrastate methodologies described above, the Authority has proposed changes to clarify the rule language for greater

⁹⁶ See 15 U.S.C. § 3052(f)(3)(B). Under the Act, the term “Covered Persons” includes Breeders who are “in the business of breeding covered horses,” while a “Covered Horse” refers to a Thoroughbred horse during the period that (a) begins “on the date of the horse’s first timed and reported workout at a racetrack that participates in covered horseraces or at a training facility” and (b) ends “on the date on which the Authority receives written notice that the horse has been retired.” *Id.* §§ 3051(2), (4), (6). A “Covered Horserace” is any horserace “involving covered horses that has a substantial relation to interstate commerce.” *Id.* § 3051(5).

fees “according to such rules as the Authority may promulgate.”¹⁰⁵ In the Commission’s view, the Authority has provided a sound basis for imposing interest on past due amounts and the Commission believes the interest provision is consistent with the Act.

Conclusion

For the preceding reasons, the Commission finds that the Horseracing Integrity and Safety Authority’s proposed modification to its Assessment Methodology Rule is consistent with the Horseracing Integrity and Safety Act of 2020 and the Commission’s rules. Accordingly, by this Order, the Authority’s proposed modification to the Assessment Methodology Rule is APPROVED.

By the Commission.

April J. Tabor
Secretary

8500. Methodology for Determining Assessments.

8510. Definitions.

For purposes of this Rule 8500 Series:

(a) *Annual Covered Racing Starts* has the meaning set forth in Rule 8520(c)(1) through December 31, 2025. Effective January 1, 2026, Annual Covered Racing Starts shall have the meaning set forth in Rule 8520(c)(2).

(b) *Covered Horseraces* has the meaning set forth in 15 USC 3051(5).

(c) *Covered Persons* has the meaning set forth in 15 USC 3051(6).

(d) *Projected Starts* means the number of starts in Covered Horseraces in the previous twelve (12) months as reported by Equibase, after taking into consideration alterations in the racing calendar of the relevant State(s) for the following calendar year.

(e) *Projected Purses Paid* means: the total amount of purses paid for Covered Horseraces (including all purse supplements included in the Equibase result chart) in the previous twelve (12) months as reported by Equibase (not including the Breeders' Cup World Championships Races), after taking into consideration alterations in purses paid for the relevant State(s) for the following calendar year.

(f) *Racetrack* has the meaning set forth in 15 USC 3051(15).

8520. Annual Calculation of Amounts Required.

(a) If a State racing commission elects to remit fees pursuant to 15 USC 3052(f)(2) for any calendar year, the State racing commission shall notify the Authority in writing on or before thirty (30) days from the receipt of the estimated amount provided to the State racing commission pursuant to Rule 8520(b). A State racing commission may be permitted to pay a portion of the estimated amount provided to the State racing commission pursuant to Rule 8520(b). In such case, the remaining portion of the estimated amount

percentage of the Annual Covered Racing Starts. The proportional calculation for each State's respective percentage of the Annual Covered Racing Starts shall be calculated as follows: (i) the total amount due from all States pursuant to 15 USC 3052(f)(1)(C)(i) shall be divided by the Projected Starts of all Covered Horseraces; then (ii) fifty percent (50%) of the quotient calculated in (c)(1)(i) is multiplied by the quotient of (aa) the relevant State's percentage of the total amount of Projected Purses Paid divided by (bb) the relevant State's percentage of the Projected Starts; then (iii) the sum of (aa) the product of the calculation in (c)(1)(ii) and fifty percent (50%) of the quotient calculated in (c)(1)(i) is multiplied by (bb) the Projected Starts in the applicable State. Provided however, that no State's allocation shall exceed ten percent (10%) of the total amount of Projected Purses Paid. All amounts in excess of the ten percent (10%) 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.

(c)(2) Notwithstanding Rule 8520(c)(1), effective beginning with the 2026 budget of the Authority, upon the approval of the budget of the Authority by the Board of the Authority, and after taking into account other sources of Authority revenue, the Authority shall allocate the calculation due from each State pursuant to 15 USC 3052(f)(1)(C)(i) proportionally by each State's respective percentage of the Annual Covered Racing Starts. The proportional calculation for each State's respective percentage of the Annual Covered Racing Starts shall be calculated as follows: (i) the total amount due from all States pursuant to 15 USC 3052(f)(1)(C)(i) shall be divided by the Projected Starts of all Covered Horseraces; multiplied (ii) by the Projected Starts in the applicable State.

(d) Pursuant to 15 USC 3052(f)(2)(B), a State racing commission that elects to remit fees, shall remit fees on a monthly basis and each payment shall equal one-twelfth (1/12) of the estimated annual amount required from the State for the following year.

(e) If a State racing commission does not elect to remit fees pursuant to 15 USC 3052(f)(2) or has remitted a partial payment under Rule 8520(a):

(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 Assessment Calculation for each Racetrack as if the State had elected to remit fees pursuant to 15 USC 3052(f)(2) (after taking into account any partial payment under Rule 8520(a)).

(ii) Estimate the number of starts in Covered Horseraces for the applicable Racetrack for the applicable year based on historical data as reported by Equibase and the condition book for the applicable Racetrack (the "Total Estimated Starts").

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

(iv) The applicable fee per racing start shall

the Assessment Calculation for each Racetrack for the applicable year or there are any past due amounts of the Assessment Calculation for each Racetrack, such overpayments, underpayments and/or past due amounts shall be equitably adjusted to account for such differences in the succeeding calendar year.

(2) Each Racetrack shall pay the Assessment Calculation for each Racetrack to the Authority within thirty (30) days from receipt of the applicable invoice.

(3) Pursuant to 15 USC 3052(f)(3)(B), the applicable fee per racing start for the Assessment Calculation for each Racetrack shall be equitably allocated among Covered Persons as follows: Racetrack: 50%; Owners: 43.50%; Trainers: 5.00%; and Jockeys: 1.50 %. Provided, however, if the horsemen's group that represents the majority of owners and trainers racing at the applicable Racetrack (the "Horsemen's Group") agrees to pay the applicable starter fee for the owners, trainers and jockeys from the purse account or other sources, such payments shall be deemed to be equitably allocated among the owners, trainers and jockeys. In such case, the Horsemen's Group and the Racetrack may mutually agree to the allocation of the applicable fee per racing start and such mutually agreed allocation shall be deemed equitably allocated among Covered Persons. Notwithstanding anything contained herein to the contrary, if a Racetrack voluntarily assumes a larger percentage of the applicable fee per racing start than set forth in this Section, such allocation shall be deemed equitably allocated among Covered Persons. The Racetrack shall collect the applicable fee per racing start from the applicable Covered Persons involved with Covered Horseraces.

(f) Not later than March 1 of each year, the Authority shall calculate the actual number of starts in Covered Horseraces as reported by Equibase for the previous calendar year and the actual total amount of purses paid (including all purse supplements included in the Equibase result chart) for Covered Horseraces as reported by Equibase for the previous calendar year and apply such amounts to the calculations set forth in Rule 8520(c) instead of the projected amounts utilized in the calculation of the estimated amount provided to the State racing commission pursuant to Rule 8520(b) for the relevant calendar year (the "True-Up Calculation"). The allocation due from each State in the current year shall be equitably adjusted to account for any differences between the estimated amount provided to the State racing commission pursuant to Rule 8520(b) for the previous year and the True-Up Calculation.

(g) In the event that any court of competent jurisdiction issues an injunction that enjoins the enforcement of the Rule 8500 Series based on the use of purses paid in the Assessment Methodology Rule, the applicable States, Racetracks and Covered Persons, as the case may be, shall pay the allocation due from each State pursuant to 15 USC 3052(f)(1)(C) and 15 USC 3052(f)(3)(A)-(C) proportionally by the applicable State's respective percentage of Projected Starts (the "Alternative Calculation"). In the event that such injunction is reversed by a court of competent jurisdiction and such reversal is final and non-appealable, the Authority shall adjust the allocation due from the applicable States, Racetracks and Covered Persons, as the case may be, in the current calendar year to account for the overpayment or underpayment created by the use of the Alternative Calculation made during the time that the injunction was in force.

(h) All notices required to be given to the Authority pursuant to the Act and these regulations shall be in writing and shall be mailed to the Authority's address listed on the Authority's website and emailed to jim.gates@hisaus.org.

(i) Interest shall accrue on all past due amounts hereunder at an interest rate equal to the prime rate published in the Wall Street Journal on the date the payment is due, compounded annually, on such amount from the due date of the payment until such amount is paid.